

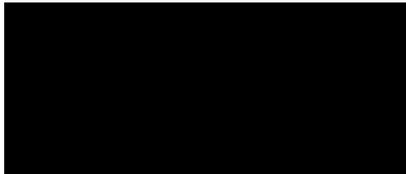
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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DATE: JUL 27 2011 OFFICE: VERMONT SERVICE CENTER

FILE:

IN RE:

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion.<sup>1</sup> The motion will be granted. The petition will remain denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that he and his ex-wife shared a joint residence; (2) that his ex-wife subjected him to battery or extreme cruelty during their marriage; (3) that he is a person of good moral character; and (4) that he married his ex-wife in good faith. We dismissed counsel's timely appeal on February 8, 2011. In our decision dismissing the appeal, we agreed with the director's grounds for denying the petition and found additionally that because he and his ex-wife divorced more than two years before he filed the instant petition, the petitioner had also failed to demonstrate his eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States. Counsel timely filed the instant motion on March 7, 2011, and submitted a brief and copies of previously-submitted and considered documentation.

#### *Applicable Law*

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, an alien who has divorced the abusive spouse remains eligible if he or she "demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. . . ."

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The

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<sup>1</sup> Counsel stated on the Form I-290B, Notice of Appeal of Motion that he was filing a motion to reopen. However, counsel's submission does not meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). As counsel's submission does meet the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3) we will adjudicate the matter on that basis.

determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:
  - \* \* \*
  - (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship [to the U.S. citizen or lawful permanent resident spouse].
    - \* \* \*
- (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
- (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.
- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating

circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

- (ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*Evidence for a spousal self-petition –*

- (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .
- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.
- (iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency



personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

- (v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

- (vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of India, married L-B-<sup>2</sup> a citizen of the United States, on August 10, 1996. They divorced on April 14, 2000. The petitioner was ordered removed from the United States on

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<sup>2</sup> Name withheld to protect individual's identity.

November 18, 2002.<sup>3</sup> He filed the instant Form I-360 on January 23, 2009. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, filed timely responses. After considering the evidence of record, including the petitioner's responses to the requests for additional evidence, the director denied the petition on April 22, 2010 and we dismissed a subsequent appeal on February 8, 2011. Counsel filed the instant motion on March 7, 2011.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon reconsideration and review of the entire record, we find that the petitioner has failed to establish any error in our prior decision.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

Counsel does not address our February 8, 2011 determination regarding the petitioner's failure to establish a qualifying relationship with his former wife and his ineligibility for immediate relative classification based upon such a qualifying relationship. As such, because the record does not establish that he was the bona fide spouse of a citizen of the United States citizen within two years of the date he filed this petition, he has failed to demonstrate his eligibility under subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc), (II)(cc) of the Act.

*Joint Residence*

As counsel does not address our February 8, 2011 determination regarding the issue of the petitioner's allegedly joint residence with L-B-, he has demonstrated no error in that determination, and has therefore failed to establish that the petitioner resided with L-B- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

In our February 8, 2011 decision dismissing the appeal, we found the letters from [REDACTED] and [REDACTED] insufficient to establish that L-B- subjected the petitioner to battery or extreme cruelty during their marriage. We stated that although we did not question their professional expertise, neither of them described any specific incidents of abuse, and neither connected the petitioner's symptoms to any abuse he suffered during his marriage to L-B-, which ended over eight years before he was treated by either doctor. As such, they did not establish that L-B- abused the petitioner.

On motion, counsel asserts that the petitioner's depression "constitutes extreme cruelty." We disagree. When an individual suffers from depression it does not necessarily follow that they were abused. Nor do the letters from [REDACTED] make that connection. Counsel also implies that we should have requested additional documentation from [REDACTED] and that in failing to do so we "may have indulged in [the] unauthorized practice of medicine." Again, we disagree. First, it

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<sup>3</sup> The Board of Immigration Appeals (BIA) summarily dismissed the petitioner's appeal on April 27, 2004, and the BIA dismissed two subsequent motions to reopen on August 14, 2007 and January 22, 2010.

is not our role to request documentation in order to establish the petitioner's claim, as the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Nor is counsel's statement that we may have engaged in the unauthorized practice of medicine persuasive, as we did not question the medical evaluations of [REDACTED]. We merely noted that neither doctor indicated any connection between the petitioner's medical conditions and any abuse he may have endured during his marriage to L-B-.

We found the testimony of [REDACTED] unconvincing in our February 8, 2011 decision. We stated that these four individuals failed to describe any specific incidents of abuse in probative detail and found that, for that reason alone, their testimony failed to establish that L-B- abused the petitioner. We also found the actual authorship of these four affidavits to be in question, as they are nearly identical to one another: their description of the alleged abuse is nearly identical, and they contain identical grammatical mistakes and typographical errors. On motion, counsel states that the affidavits were apparently typed by the same individual, and that the four affiants do not speak the English language well. Counsel's explanation is not persuasive. Whether the affidavits were typed by the same individual is not relevant. The identity of the individual who typed the affidavits is unimportant; it is the authorship of the affidavits that matters. The fact that the affidavits were nearly identical to one another calls into question their actual authorship and diminishes their probative value.

Counsel has demonstrated no error in our prior determination that the relevant evidence does not establish that L-B- subjected the petitioner to battery or extreme cruelty during their marriage. Accordingly, the petitioner has failed to establish that L-B- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Moral Character*

As counsel does not address our February 8, 2011 determination regarding the issue of the petitioner's alleged good moral character, he has demonstrated no error in that determination. The petitioner, therefore, has failed to demonstrate that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

#### *Good Faith Entry into Marriage*

Counsel asserts on motion that in reaching our determination that the petitioner had failed demonstrate his good faith entry into marriage with L-B-, we failed to consider the Form I-130, Petition for Alien Relative L-B- filed on behalf of the petitioner on October 23, 1996. Counsel also looks to the Form I-485, Application to Register Permanent Residence or Adjust Status the petitioner filed in conjunction with the Form I-130 as well as the employment authorization the legacy Immigration and Naturalization Service (INS) issued the petitioner in connection with the pending Form I-485. Although the Forms I-130 and I-485 were both denied on October 13, 1997, and the employment authorization issued in connection with the pending Form I-485 was terminated on that same date, counsel nonetheless argues that because the legacy INS issued the work authorization, regardless of the fact that it was subsequently terminated, USCIS has "waived

any challenge to the marital relationship, or good-faith marriage.” He argues further that by finding that the petitioner had failed to demonstrate his good faith entry into marriage with L-B- when we dismissed the appeal, we “overlooked the I-130 evidence” even though the Form I-130 was also denied, and applied a “double standard.”

We are not persuaded by counsel’s assertions. First, the Form I-130 is part of the petitioner’s administrative file and was in fact reviewed by the AAO prior to issuing our February 8, 2011 decision. Second, the Form I-130 petition referenced by counsel on motion was denied on October 13, 1997. The Form I-485 was also denied on that date, and the petitioner’s work authorization that had been issued in connection with the pending I-485 was also terminated at that time. Given that the Forms I-130 and I-485 were denied, it is unclear how we applied a double standard in denying the instant petition. Moreover, the initial grant of the work authorization did not involve a determination by the legacy INS that the petitioner had entered into marriage with L-B- in good faith. Rather, as noted, it was issued in connection with the pending Form I-485 and was terminated when the Form I-485 was denied.

Counsel has demonstrated no error in our prior determination that the relevant evidence does not establish that the petitioner married L-B- in good faith. Accordingly, the petitioner has failed to establish that he married L-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Oral Argument Before the AAO*

Counsel’s implicit request for oral argument before the AAO is denied. U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). Counsel identifies no specific, unique factors or issues of law to be resolved, and we find the written record of proceedings to fully represent the facts and issues raised in this case. Consequently, counsel’s request for oral argument is denied.

#### *Unfairness of the Appellate Process*

Counsel argues that the appeals process is unfair. Specifically, counsel asserts that the allowance of thirty days during which to submit a brief and/or additional evidence directly to the AAO following submission of a Form I-290B provided by 8 C.F.R. § 103.3(a)(2)(iv) is not fair. However, we lack the discretionary authority to waive that regulatory requirement.

#### *Conclusion*

Although the motion to reconsider has been granted, it fails to establish any error in our prior decision. The petitioner has failed to establish: (1) that he had a qualifying relationship with his former wife; (2) that he is eligible for immediate relative classification based upon that relationship; (3) that he and his ex-wife shared a joint residence; (4) that his ex-wife subjected him to battery or

extreme cruelty during their marriage; (5) that he is a person of good moral character; and (6) that he married his ex-wife in good faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The February 8, 2011 decision of the Administrative Appeals Office is affirmed. The appeal remains dismissed and the petition remains denied.