

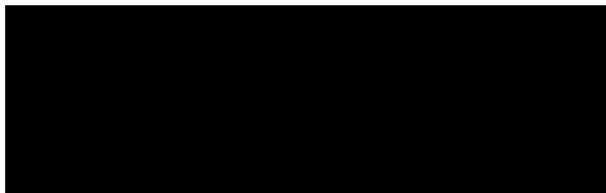
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



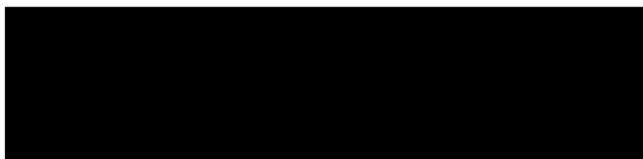
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DATE: **JUN 22 2011** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:

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 Director, Vermont Service Center, initially approved the petition. Upon subsequent review, the director revoked approval of the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

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 United States citizen.

In the January 15, 2010 revocation decision, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse. On appeal, counsel submits a Form I-290B, Notice of Appeal or Motion, and a supplemental brief.

#### *Applicable Law and Regulations*

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 based on his or her relationship to the abusive spouse, 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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

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 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 in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

\* \* \*

(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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are set forth in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*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.

\* \* \*

(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.

\* \* \*

(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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in its decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Preliminarily, we acknowledge counsel's contention regarding the "any credible evidence" standard. We disagree that the petitioner has substantiated his claim of spousal abuse under that standard. Section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty and good faith lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv) and (vii). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

We also find that the limited evidence of record did not establish the petitioner's eligibility for this benefit; thus precluding the initial approval of the Form I-360. Regarding a revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). In this matter, the director's initial approval of the Form I-360 constituted error on the part of the director and the director's discovery of the error is good and sufficient cause to require the issuance of a NOIR. In addition, the evidence and explanation submitted in rebuttal to the NOIR were also insufficient to establish the petitioner's eligibility for this benefit.

### *Facts and Procedural History*

The petitioner is a native and citizen of Nepal. He entered the United States on or about January 23, 2002 on a B-2 visitor's visa with temporary authorization to remain in the United States until July 22, 2002. He married M-J-<sup>1</sup> the claimed abusive United States citizen on July 15, 2002. On or about December 6, 2002, M-J- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The petitioner left the United States to visit Nepal and upon his return was paroled into the United States on February 13, 2004 to seek adjustment of status. The couple attended an interview before an immigration officer in August 2004. The Form I-130 and Form I-485 were denied on March 10, 2006 and he was placed in removal proceedings. On June 22, 2006, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that he resided with M-J- from July 2002 until June 2004. The record includes a Judgment of Divorce terminating the marriage on July 9, 2007. On October 21, 2008, the director approved the Form I-360 petition. Upon review of the record, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition on November 26, 2008. The petitioner provided a rebuttal to the NOIR and on January 15, 2010, after considering the rebuttal, the director revoked approval of the petition. The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by M-J-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a supplemental brief.

### *Battery and Extreme Cruelty*

In a June 15, 2006 personal statement in support of the Form I-360, the petitioner declared he was abused "whether mentally or physically" and M-J- threatened him with deportation from the United States. He indicated that she was uncooperative and that she left him in June 2004 for another man in Alabama. The petitioner stated that she lied to an immigration official, cheated him, and put him in a difficult situation. The petitioner noted that he was shocked by M-J-'s behavior and was scared of her. He also noted that one time she tried to attack him with a knife and threatened him to not tell anyone. He indicated that when he did not support her demands she called him names. He noted that it was hard to disclose everything that she did to him.

In an undated personal statement, the petitioner declared that he lived with M-J- for almost two years and that for the first year the marriage was "familiar and she came after different attitude and start conflict between us." The petitioner added that M-J- used derogatory words toward him, threatened him with deportation, and threatened him with a kitchen knife. The petitioner indicated that he left for Nepal for a couple of months and when he returned, M-J- had already left, that she took his stuff and he learned that she was "affiliated" with a different person in Alabama and so he filed for divorce.

In a February 6, 2009 statement in response to the director's NOIR, the petitioner stated that during M-J-'s stay at the apartment she had beaten him on several occasions and she cheated on

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<sup>1</sup> Name withheld to protect the individual's identity.

him with someone else. The petitioner indicated that in September 2003 when he came home from work a strange man was in the apartment and M-J- wanted him to cook some food for her and her friend but he refused, so she took a kitchen knife and told him to get out of the apartment. He noted that this kind of behavior continued but he did not report it to the authorities but told some friends. He noted that she called him derogatory names even though he was supporting her and she threatened him with jail for domestic violence if he reported what she was doing to him. He stated that she wanted him to work and do the housework and did not want him to visit his friends. The petitioner noted that when he returned from visiting Nepal and discovered that she had moved to Alabama with someone else, he met her in Alabama and asked her to return to the relationship but she threatened to call the police if he tried to visit her. The petitioner noted that he visited doctors for blood pressure control.

In a February 9, 2009 affidavit, [REDACTED] declared that she knew the petitioner and M-J- married in 2002 and the petitioner told her that he had problems with M-J- because she had threatened and beaten him many times. In a February 9, 2009 affidavit signed by [REDACTED] declared that once when he was visiting the couple in August 2003, the couple discussed their relationship and M-J- "suddenly excited with [the petitioner] and start jumping with him hit on his face and pull her to calm down" and he told the petitioner to get out of the apartment and the petitioner said these things happen every day.

The petitioner also provided medical records showing his treatment for blood pressure and diabetes in September and November 2004.

Upon review of the information submitted in rebuttal to the NOIR, the director determined that the petitioner had not provided detailed probative evidence to establish that he had been subjected to battery or extreme cruelty perpetrated by M-J-.

On appeal, counsel asserts that the petitioner established eligibility by his statement and the testimony of others, including an individual who witnessed a physical assault on the petitioner. Counsel avers that the petitioner has established that he was battered and that he was subjected to extreme cruelty. Counsel claims that USCIS failed to give meaningful consideration to all of the credible evidence in support of the self-petition and thus it was error to revoke the approval of the petition without good and substantial cause.

The petitioner's three statements in the record do not establish that he was subjected to battery or extreme cruelty. Although the petitioner indicates that he was beaten up on many occasions he does not describe any battery in probative detail. General statements without probative detail of specific incidents or events and the surrounding circumstances are insufficient to establish the actuality of the incident or event. Similarly, the petitioner has not established that he was subjected to extreme cruelty as defined in the statute and regulation. The petitioner initially indicated that M-J- threatened him with deportation, threatened him with a knife, called him names, lied to an immigration official, cheated on him, and abandoned the marriage while he was out of the country. The petitioner does not provide any detail regarding any specific threat of deportation or the circumstances of the threat with the knife. The initial record included no probative testimony that the petitioner had been subjected to actual threatening or controlling

behavior by his wife. Infidelity and abandonment are not actions that constitute extreme cruelty under the statute and regulation. In response to the NOIR, the petitioner provided a brief description of M-J-'s threat with a knife by indicating that her threat occurred during a dispute regarding cooking dinner. There is insufficient probative testimony regarding the alleged threat and the context to establish that this incident occurred and that this incident constituted extreme cruelty. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents to result in such a conclusion. In this matter, the petitioner has failed to provide such testimony.

Upon review of the testimony of [REDACTED] and [REDACTED] submitted on the petitioner's behalf, their testimony also lacks probative detail. As the director observed in the revocation decision, the testimony provided by [REDACTED] is not detailed and does not include the context of the alleged incident he observed. There is insufficient probative information in the brief statement to evaluate and conclude that the petitioner was the victim of battery in this incident. [REDACTED] in her testimony does not indicate that she witnessed any instances of abuse and does not describe any instances of battery or extreme cruelty.

Upon review of the medical records submitted, these medical records do not show that the petitioner's high blood pressure or his diabetes are causally connected to specific instances of battery or of extreme cruelty as defined in the statute and regulation.

When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty. The general information in the record does not include sufficient information and detail to establish that M-J-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. The declarations again lack the requisite detail of specific events and the surrounding circumstances to conclude that M-J-'s conduct constituted battery and/or extreme cruelty.

The petitioner's testimony and the testimony of his friends fail to establish that the actions of M-J- were comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that M-J-'s behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by M-J-.

#### *Good Faith Entry Into Marriage*

Beyond the decision of the director, the petitioner has not established that he entered into the marriage in good faith. He does not provide any information regarding his initial meeting and

subsequent courtship with M-J-. He indicates generally in a statement submitted in support of the Form I-360 that they met in Denton, Texas and after two months decided to get married. The record also included: a lease dated August 31, 2002 for the claimed marital residence [REDACTED] M-J-'s voter registration card for the [REDACTED] address dated March 27, 2003; bank statements with minimal banking activity for a joint account for the months of March to August 2004; a photocopy of an Internal Revenue Service (IRS) 2003 joint tax return prepared in April 2004 but with no evidence that the return was filed; a car insurance policy that shows that M-J- was added to the policy in April 2004; utility bills for March, May, and June 2004; and a phone bill dated October 19, 2006. The record further included two affidavits, one signed by [REDACTED] and one signed by [REDACTED] indicating that they knew the couple resided together at the Balch Springs address. The record also included one photograph of the couple.

Upon review of the documentary evidence submitted, the lease and M-J-'s voter registration card may establish that M-J- resided at the [REDACTED] dress, but these documents do not establish the petitioner's intent when entering into the marriage. The bank statements and utility bills for a period of time in 2004, some subsequent to the date the couple separated, are insufficient to establish the petitioner's intent when entering into the marriage. There is no evidence that the IRS tax return was filed, thus this document has no probative value. The addition of M-J- to the petitioner's car insurance policy subsequent to the time the couple separated does not establish the petitioner's intent when entering into the marriage. One photograph of the couple does not establish the petitioner's good faith intent. The minimal documentary evidence submitted does not provide probative indicia of the couple establishing a life together and fails to establish the petitioner's intent when entering into the marriage.

While the lack of probative documentary evidence is not necessarily disqualifying, the petitioner does not provide probative testimony regarding his courtship with M-J- or his interactions with M-J- in detail. He does not describe the couple's mutual interests in detail, he does not detail the couple's daily routines, and he fails to provide any probative information for the record that assists in determining his intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter the petitioner's brief testimony does not include probative detail establishing his intent. Similarly, the statements from his friends fail to provide any probative details regarding their observations of the petitioner's interactions with M-J-, other than indicating that the couple resided at the same residence.

The record in this matter does not include sufficient probative evidence to establish that the petitioner entered into marriage with M-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Conclusion*

The revocation of the approval of the petition will be affirmed and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains

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entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

**ORDER:** The appeal is dismissed. Approval of the petition remains revoked.