

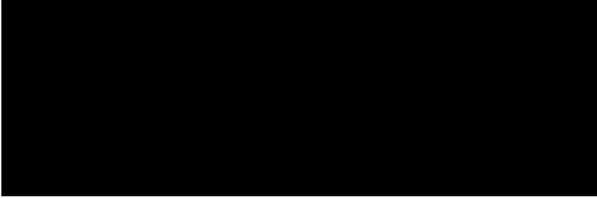
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
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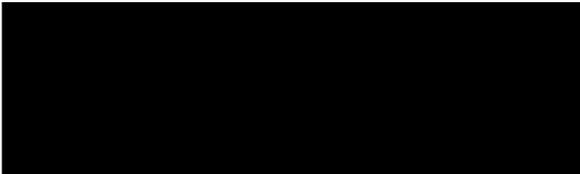
IN RE:

Petitioner:



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

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, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

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

The director determined that the petitioner had not established that he had jointly resided with a United States lawful permanent resident, that he had been subjected to battery or extreme cruelty perpetrated by a United States lawful permanent resident, or that he had entered into the marriage in good faith.

On appeal, counsel submits a brief and additional evidence.

#### *Applicable Law and Regulations*

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful permanent resident 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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:

(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.

\* \* \*

(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.

\* \* \*

(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.

\* \* \*

(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.

### *Facts and Procedural History*

The petitioner is a native and citizen of Pakistan. He married S-A-, the claimed abusive lawful permanent resident spouse, on November 22, 1999 in Pakistan. He entered the United States on July 2, 2004 on a V visa. On December 14, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On March 17, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had jointly resided with S-A-, that he had been subjected to battery or extreme cruelty perpetrated by S-A-, or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides a brief and a copy of a Form I-130, Petition for Alien Relative approval notice in support of the appeal.

### *Residence*

The petitioner in this matter indicates on the Form I-360 that he jointly resided with S-A- from November 22, 1999 to December 2004. In the petitioner's December 8, 2009 statement he states that his marriage to S-A- was an arranged marriage and shortly after the marriage, S-A- returned to the United States. He indicates that S-A- returned to Pakistan on September 30, 2000 and then returned to the United States and back to Pakistan several more times. The petitioner indicated that S-A- encouraged him to come to the United States and he did so on July 2, 2004. He provides no information regarding the claimed joint residence in Pakistan or the claimed joint residence in the United States. He claims he moved out of the United States marital home in December 2004.

In response to the director's RFE, the petitioner provided a second statement but did not provide further information regarding the couple's claimed joint residence. The petitioner also provided affidavits signed by [REDACTED]. Neither affiant described the couple's claimed joint residence, either in Pakistan or the United States. The record also included the petitioner's personal copy of his 2004 Internal Revenue Service (IRS) Form 1040. The record does not include a certified print out of the IRS tax return showing that the Form 1040 was actually filed.

On appeal, counsel for the petitioner asserts that the petitioner provided a tremendous amount of proof showing that he lived with his wife in Pakistan when he was interviewed by the United States Embassy in Islamabad, Pakistan. Counsel also references the petitioner's entry into the United States on a V visa and contends that if an immigrant visa had been available earlier, the petitioner would have entered the United States as a lawful permanent resident.

Upon review of the record before the AAO, the record includes no evidence that the petitioner jointly resided with S-A-, either in the United States or in Pakistan. The petitioner provides no joint addresses, he does not describe the joint residences in any way, and he does not provide or describe in any way the "proof" that he submitted to the United States Embassy in Islamabad, Pakistan. The record includes no evidence that the petitioner jointly resided with his lawful permanent resident wife.

### *Abuse*

The petitioner in his initial statement indicated that his wife married him even though she was involved with another man and that after he came to the United States he discovered that she had a second affair with a different man. The petitioner expressed his humiliation and distress at his wife's behavior. The petitioner also indicated that on December 8, 2004, S-A-'s father came to their apartment and threatened him, saying that he would kill the petitioner if the petitioner did not divorce S-A-. The petitioner provides a copy of a police report he filed on December 9, 2004, wherein he disclosed this incident to the police and asked for an order of protection. The record does not include evidence that the petitioner followed through with his request for an order of protection in a court of law.

In response to the director's RFE, the petitioner reiterated that S-A- cheated on him throughout the marriage and he was humiliated by her actions. The petitioner noted that he filed for an Order of Protection against S-A-'s father, but the record does not include such an order. The record also included affidavits signed by [REDACTED] and [REDACTED]. [REDACTED] noted that he did not care for S-A- or her family and she treated the petitioner poorly and even threatened the petitioner in front of him. [REDACTED] indicated that he accompanied the petitioner to the police station as he was present when S-A-'s father threatened the petitioner. [REDACTED] noted that the petitioner had told him that S-A- yelled at him and cheated on him.

On appeal, counsel for the petitioner asserts that physical abuse is only one type of abuse and that the petitioner suffered an extreme amount of mental torture and humiliation in this matter. Counsel contends that United States Citizenship and Immigration Services (USCIS) failed to consider the effects of mental and emotional abuse.

Upon review of the petitioner's statements and the statements submitted on his behalf, the record does not include the requisite probative testimony establishing that the petitioner was subjected to battery or extreme cruelty as defined in the statute and regulation. The petitioner does not provide a detailed account of specific incidents or events that constitute battery and the petitioner's description of his wife's affairs and general references to her behavior are insufficient to establish that she subjected him to extreme cruelty as the term is defined in the

statute and regulation. The affidavits submitted on the petitioner's behalf also fail to provide probative detail of specific incidents of battery or extreme cruelty. The affiants do not indicate that they witnessed behavior that constitutes battery or extreme cruelty as set out in the statute and regulation. For example, [REDACTED], although stating that S-A- threatened the petitioner in front of him, provided no detail about the incident or the surrounding circumstances of the incident. Similarly, the statements of the petitioner and the affiants' statements submitted on the petitioner's behalf fail to provide the necessary detail of the alleged threat made by the petitioner's father-in-law. The information provided to the police is general and does not provide sufficient evidence to allow a conclusion that the petitioner's father-in-law's behavior was initiated or condoned by S-A-. The record is simply insufficient in this regard.

Upon review of the petitioner's testimony and the testimony of the individuals who submitted statements on his behalf, the record does not demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that S-A-'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 petitioner's statements and the statements he made to others lack the consistent detail necessary to establish that S-A- subjected him to battery or that her actions constitute extreme cruelty as defined in the statute and regulation. The petitioner has failed to establish that S-A-'s actions 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 S-A-'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)). In this matter, the record presented lacks sufficient information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse.

#### *Good Faith Entry Into Marriage*

The petitioner initially stated that his marriage to S-A- was an arranged marriage. He does not provide probative information regarding his specific intent when entering into the marriage. The record lacks information regarding the couple's joint life for the four years the couple claimed to be married. The petitioner does not provide the requisite information regarding his interactions with S-A- subsequent to the marriage, except as it relates to the claimed abuse. The record includes photographs of the couple on what appears to be their wedding day.

On appeal, counsel for the petitioner asserts that the petitioner provided a tremendous amount of proof showing that his marriage was proper and bona fide when he was interviewed by the United States Embassy in Islamabad, Pakistan. Counsel also references the petitioner's entry into the United States on a V visa and the approval of a Form I-130, Petition for Alien Relative, filed on the petitioner's behalf and contends that this evidence is further proof that his marriage is bona fide.

Upon review of the petitioner's statement, the petitioner fails to provide substantive information regarding his courtship with and eventual marriage to S-A-, except as it relates to the claim of abuse. The petitioner does not describe the couple's mutual interests, he does not describe his family circumstances in detail, and he does not provide any probative information for the record that assists in determining his intent when entering into the marriage. The photographs submitted show that the petitioner and S-A- were together on one occasion but do not provide evidence of the petitioner's 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 has not set forth his intent in probative detail in a statement to USCIS and the record does not include any evidence that the couple established a life together.

Contrary to counsel's assertion, approval of a Form I-130 and entry into the United States on a V visa, while relevant, are not prima facie evidence of the petitioner's good-faith entry into marriage under section 204(a)(1)(B)(ii)(i)(aa) of the Act. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the petitioner to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9<sup>th</sup> Cir. 2002) (In subsequent proceedings, "the approved petition might not standing alone prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws."). In this matter, the petitioner provided only a cursory description of his marriage except as it related to his claims of abuse and the remaining, relevant evidence lacks probative information sufficient to meet his burden of proof. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with S-A- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Upon review of the petitioner's statements and the totality of the record, the record is bare of the essential detail necessary to demonstrate that the petitioner's intent to enter into the marriage was in good faith. The record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with S-A- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

### *Conclusion*

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