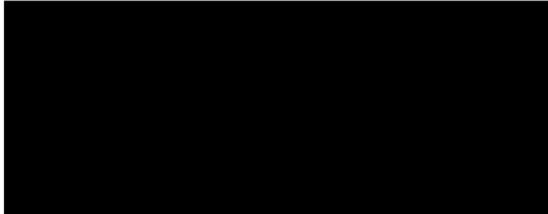


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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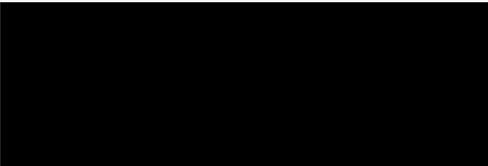
DATE: **FEB 28 2012** Office: VERMONT SERVICE CENTER

FILE: 

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:

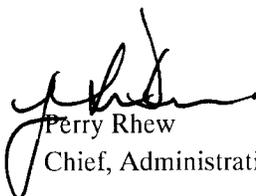


INSTRUCTIONS:

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

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 (USC) spouse or that he had married the USC spouse in good faith. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and additional documentation.

#### *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 pursuant to Section 204(a)(1)(A)(iii) of the Act are further set out 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.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

### *Facts and Procedural History*

The petitioner is a citizen of the former Yugoslavia. He entered the United States on or about September 25, 2001 as a B-2 visitor with temporary authorization to remain in the United States until March 24, 2002. On August 22, 2003, he married [REDACTED],<sup>1</sup> the claimed abusive United States citizen. On July 21, 2006, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The record shows that the marriage was dissolved on November 14, 2006. Upon review of the insufficiency of the record, the director issued a request for evidence (RFE) and a Notice of Intent to Deny (NOID) the petition and ultimately denied the petition based on the reasons set out in the NOID. On appeal, counsel for the petitioner asserts that the director misapplied the facts and ignored key evidence or accorded the evidence minimal weight. Counsel also contends that the petitioner's prior counsel was ineffective. Counsel provides a brief and additional documentation in support of the appeal.

### *Battery and/or Extreme Cruelty*

The director considered the documentation previously submitted, including the petitioner's testimony, the affidavits submitted on his behalf, and the psychological reports prepared by [REDACTED]. The director questioned the reliability of the petitioner's testimony as the petitioner had provided conflicting information regarding his joint residence with [REDACTED]. As the petitioner's testimony and the testimony of affiants on his behalf regarding one or two incidents of the claimed abuse conflicted with other information in the record, the director determined little probative weight could be accorded the petitioner's or other affiants' testimony.

On appeal, counsel for the petitioner asserts that the petitioner explained his different addresses and provided evidence of his joint residence with his former spouse. Counsel contends that the director failed to give adequate weight to [REDACTED] psychological evaluations and the medical reports regarding the petitioner's back pain and vertigo which can be related to stress. Counsel submits articles indicating anxiety can cause dizziness and vertigo. Counsel also provides second affidavits from two of the petitioner's friends. Counsel submits the petitioner's son's school records to demonstrate the petitioner would suffer hardship if he were to return to Serbia.

The petitioner initially described [REDACTED] behavior as obsessive compulsive regarding cleanliness and noted she had violent mood swings. The petitioner declared that she called him names in front of others, yelled and screamed at him, threatened to call immigration, and kicked him out of her home on a number of occasions. The petitioner noted that [REDACTED] and her family indicated to him that [REDACTED] had mental health issues for which she took medication and that after her outbursts she would return to normal.

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

[REDACTED], in her initial report dated July 3, 2006, noted the petitioner's complaint of symptoms of "sleep disturbance, loss of appetite, weight loss, significantly decreased self-confidence and self-esteem, general anxiety, inability to concentrate, loss of interest in previously enjoyed activities, loss of social support systems, hopelessness, doubts, and fear about the future due to the 'unpredictability' of his wife." [REDACTED] indicated that the petitioner "reportedly developed these symptoms in response to his verbally abusive, unpredictable, and stormy marriage, and the most recent and seemingly final marital discord [June 2006] and the subsequent separation." [REDACTED] report of the petitioner's interactions with his former spouse mirrored the petitioner's statements regarding his marriage. [REDACTED] noted the petitioner's report of "serious marital discord with his wife for two years" and found that the petitioner's "reported symptoms and his history within the marriage are indicative of an Adjustment Disorder with Mixed Anxiety and Depressed Mood." In [REDACTED] June 30, 2008 report, she noted the petitioner's divorce which was finalized in November 2006 and noted the petitioner's report that [REDACTED] - continued to text him subsequent to the divorce. She added that the petitioner was unable to identify his former spouse's mental state as inadequate, inconsistent, abusive or pathological and that gradually [REDACTED] - increased her psychological abuse in a form of unpredictable extreme emotional swings, verbal aggression, and emotional blackmailing including frequent threats of abandonment and suicide. [REDACTED] further addressed the petitioner's May 9, 2008 relapse into acute anxiety attacks and depression and vertigo which she stated resulted from a prior attorney's improper handling of his immigration case and demand for money. In a February 18, 2011 report, [REDACTED] reported that the petitioner initiated further consultations because of symptoms related to the delay in his immigration case. In this report, [REDACTED] noted the petitioner's thoughts of suicide beginning a month previously (January 2011). [REDACTED] evaluation submitted on appeal reports the petitioner's further distress regarding the denial of his immigration matter.

The record includes a June 30, 2008 letter from [REDACTED], chiropractor, noting the petitioner had been seen for low back pain for three years which noted the onset of the back pain was intense physical activity as well as bouts of depression. The record also includes a May 24, 2008 report of the petitioner's emergency room visit for vertigo.

The record on appeal includes an additional statement signed by [REDACTED] who states that between 2005 and 2006 [REDACTED] - used to call the petitioner to harass him. [REDACTED] notes that he heard [REDACTED] - call the petitioner names and threaten to deport him and after one such conversation, the petitioner wanted to jump off the building they were working on to commit suicide. [REDACTED] Tomic does not identify the date of this incident. [REDACTED] also declares that on an unspecified date, [REDACTED] - called the petitioner while he was driving and told him that she had called immigration and that when the petitioner heard this he lost his concentration and was in a serious accident. [REDACTED] does not indicate how he became aware of the alleged cause of this accident. [REDACTED] does not address why his initial testimony only indicated his belief that [REDACTED] called to check up on the petitioner because she was jealous and possessive and did not include this new information regarding threats.

In [REDACTED] second affidavit submitted on appeal, [REDACTED] testifies that [REDACTED] - was very abusive to the petitioner and constantly harassed and threatened him. [REDACTED] indicates that

in a few of the phone conversations he witnessed, [REDACTED] would threaten the petitioner with deportation. [REDACTED] does not address why his initial testimony referred only to the petitioner not coming over to his house because [REDACTED] did not want him going to his house without her.

Upon review of the petitioner's statements and the evaluations of his psychologist, the petitioner has not provided probative testimony that he was subjected to battery perpetrated by his former spouse. The petitioner's claim relates to the alleged extreme cruelty perpetrated by his former spouse. In that regard, the petitioner in his statements to United States Citizenship and Immigration Services (USCIS) that are mirrored in his report to his psychologist, does not provide probative testimony of specific incidents of his former spouse's behavior sufficient to establish that his former spouse's actions against him 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 [REDACTED]'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's psychologist in her initial evaluation did not attribute the petitioner's symptoms to acts that could constitute extreme cruelty as that term is set out in the statute, regulation, and case law but rather noted the petitioner's report of "serious marital discord with his wife for two years." [REDACTED] in her June 30, 2008 evaluation noted the petitioner's former spouse's extreme emotional swings, verbal aggression, and emotional blackmail which included threats of abandonment and suicide; however, [REDACTED] does not describe this behavior as actions that include actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. Moreover, [REDACTED] subsequent evaluations attribute the petitioner's symptoms subsequent to his divorce to his belief that he was poorly represented by his former attorney in his immigration case and the denial of his immigration claim not to his former spouse's actions during their marriage.

The letter from the petitioner's chiropractor identifies the onset of the petitioner's back pain, circa June 2005 as from intense physical activity and bouts of depression. As the petitioner has not provided probative evidence that his depression resulted from extreme cruelty perpetrated by his former spouse as that term is defined in the statute and regulation, the letter has little probative value. Similarly, the petitioner's May 24, 2008 visit to the emergency room for vertigo has not been casually connected to his former spouse's actions during the marriage.

The statements of the petitioner's two friends offered on appeal do not identify when the alleged harassment and threats of deportation occurred. [REDACTED] report that the petitioner was suicidal does not coincide with the petitioner's first report of suicidal thoughts to his psychologist in 2011, more than four years subsequent to the termination of the marriage. [REDACTED] also fails to identify how he learned of the petitioner's accident and the claimed threats

that allegedly precipitated the accident. Similarly, [REDACTED] does not identify the circumstances of his knowledge of the claimed threats of deportation and does not indicate when these threats allegedly occurred. Neither affiant offers an explanation regarding their failure to report these events in their previous testimony.

The petitioner's testimony and the testimony submitted on his behalf is insufficient to establish that his former spouse's actions against him constituted battery or extreme cruelty during the marriage as those terms are defined in the statute, regulation, and case law. The petitioner has not provided testimonial or other evidence on appeal sufficient to overcome the director's decision.

### *Good Faith Entry into Marriage*

The director also discussed the deficiencies in the petitioner's testimony, the testimony of the individuals who submitted testimony on his behalf, and the petitioner's documentary evidence in regards to the petitioner's intent when entering into the marriage. The director specifically found that the petitioner's explanation regarding his use of his previous address while allegedly residing with [REDACTED]- was not credible. We concur. The director also specifically addressed the deficiencies in the documentary evidence submitted. For example, the various accounts established as joint accounts did not include evidence that [REDACTED] had access to the accounts. In addition to the inconsistencies in the petitioner's testimony regarding his addresses, the petitioner does not provide a consistent account of when he met his former spouse. In the petitioner's initial statement in support of the petition, the petitioner stated that he met his former spouse at a Target, they began dating, he got to know her family over a five-month period, and that the couple continued to date during the winter. The petitioner noted that in March 2003, his former spouse asked that he move into her house and he did so and the couple married in August 2003. The petitioner reported to his psychologist, as noted in her July 3, 2006 report as well as subsequent reports, that he met his former spouse "three years ago" which would be sometime between January 2003 and June 2003 and that after two months of dating she proposed to him and they married in August 2003. Thus, the petitioner's initial statement that he met his former spouse, dated for a length of time, moved in together in March 2003, and married in August 2003 differs from his report to his psychologist that after two months of dating with no mention of living together the couple married in August 2003.

On appeal, counsel for the petitioner reiterates that the petitioner met his former wife in 2003 and after a short but intense relationship married in August 2003. Counsel asserts that the text messages sent by [REDACTED]- in 2007 and 2008 were submitted to establish that the marriage was in good faith. Counsel also notes that [REDACTED]- attended one of the sessions with [REDACTED] and asserts that this is also evidence of a good faith marriage. Counsel contends that the evidence establishing joint residence and a good faith marriage is abundant and that any testimony of the petitioner's former spouse cannot be given any weight. Neither affidavit submitted on appeal addresses the issue of the petitioner's intent when entering into the marriage.

Upon review the record is insufficient to establish the petitioner's intent when entering into the marriage. Although the text messages in the record and the petitioner's former spouse's attendance of one therapy session may be evidence of her intent regarding the marriage, it is not evidence of the

petitioner's intent. The record does not include sufficient consistent, probative, credible testimony by the petitioner to establish his intent when entering into the marriage. The documentary evidence submitted includes numerous deficiencies as detailed by the director in the RFE, NOID, and decision. The petitioner has not provided consistent probative testimony regarding his courtship of ██████, their wedding ceremony, their shared residence, and their shared experiences, except as it relates to the claim of abuse. The testimony of the individuals who submitted affidavits on the petitioner's behalf does not describe in sufficient detail their personal knowledge and observations of the relationship; thus is insufficient to establish the petitioner's intent when entering into the marriage. The petitioner has not provided testimony on appeal that overcomes the director's decision on this issue. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with ██████ in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Hardship*

Hardship suffered by the petitioner if he is removed from the United States is not an issue when considering a petitioner's eligibility for protection under section 204(a)(1)(A)(iii) of the Act. Accordingly, we shall not address this portion of counsel's appellate brief.

### *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.