

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

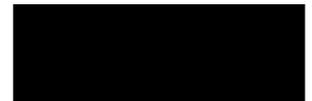


B9

DATE: OFFICE: VERMONT SERVICE CENTER

JAN 05 2012

FILE:

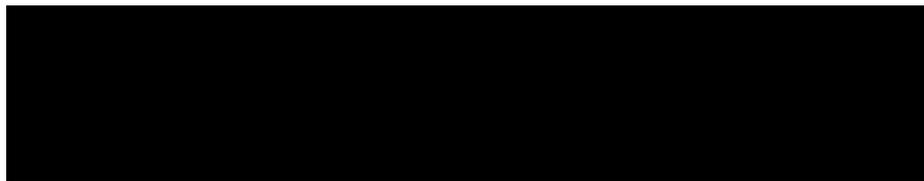


IN RE:



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:

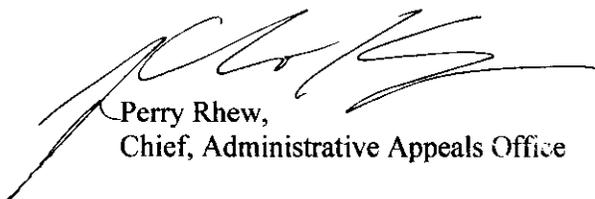


INSTRUCTIONS:

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) summarily dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. 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 United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that his wife subjected him to battery or extreme cruelty during their marriage; and (2) that he married her in good faith. The petitioner's subsequent appeal was summarily dismissed. On motion to reopen, newly-retained counsel submits three separate memoranda of law and additional evidence, including evidence regarding alleged deficient representation of the petitioner by prior counsel. Counsel's submission qualifies as a motion to reopen under the requirements set forth at 8 C.F.R. § 103.5(a)(2).

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).

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 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:

- (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 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.

* * *

- (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.

Pertinent Facts and Procedural History

The petitioner, a citizen of the Philippines, married P-B-,¹ a citizen of the United States, on November 30, 2002, and they divorced on May 16, 2009.² The petitioner filed the instant Form I-360 on February 20, 2008. The petitioner and P-B-, therefore, were still married at the time the petition was filed. The director issued a subsequent request for additional evidence (RFE) and notice of intent to deny (NOID) the petition, to which the petitioner, through prior counsel, filed timely responses. After considering the evidence of record, including the petitioner's responses to his correspondence, the director denied the petition on June 22, 2010. The AAO summarily dismissed prior counsel's appeal on May 26, 2011, and newly-retained counsel timely filed the instant motion to reopen on June 28, 2011.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition. Beyond the decision of the director, we find additionally that section 204(c) of the Act bars approval of the petition and that, because the petitioner has not complied with section 204(c) of the Act, he is consequently ineligible for immediate relative classification based upon his marriage to P-B-.

The Petitioner's Sworn Statement Executed Before a USCIS Officer On August 10, 2007

In reaching his decision denying the petition, the director relied heavily upon a sworn statement executed by the petitioner on August 10, 2007, in which he admitted to having married P-B- for the purpose of obtaining immigration benefits.³ In that statement, which the petitioner attested was made freely, voluntarily, and willfully, he admitted that he and P-B- did not marry for love; that he performed work for P-B- and her family; and that his father made cash payments to P-B- and her family on his behalf, so that he could obtain lawful immigrant status in the United States; and that although he and P-B- lived together for a short period of time, they never consummated the marriage.

In his July 16, 2008 self-affidavit, the petitioner challenged the validity of the sworn statement he executed on August 10, 2007. The petitioner stated that the U.S. Citizenship and Immigration

¹ Name withheld to protect individual's identity.

² Although the record does not contain a copy of a divorce judgment, the petitioner stated on the Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, that he filed on September 9, 2010, that he and P-B- divorced on May 16, 2009.

³ A Form I-862, Notice to Appear, was issued to the petitioner shortly after he executed this sworn statement on August 10, 2007. *See Notice to Appear in Removal Proceedings under Section 240 of the Immigration and Nationality Act*, dated September 24, 2007. The petitioner remains in immigration proceedings before the Immigration Court in San Francisco, California and his next hearing is scheduled for January 31, 2012.

Services (USCIS) immigration officer (hereinafter "the officer") to whom he gave his statement met him at the petitioner's place of employment, and that he was "shocked and surprised" the officer had come to his place of employment. He claimed that he was unprepared to discuss the details of his marriage, was unclear as to the nature of the officer's authority, was fearful the officer would arrest him, and that he was not given a copy of the sworn statement he had executed.⁴ The petitioner also stated that the officer told him he would "bring [him] down to the ground" if the petitioner was uncooperative. The petitioner asserted that the officer told him that unless he executed a sworn statement confessing that his marriage to P-B- was not authentic, the officer would handcuff and arrest the petitioner. The petitioner also accused the officer of threatening his brother and parents if he did not comply. The petitioner stated that he was not provided with any *Miranda*⁵ rights or told that he could meet with an attorney. The petitioner characterized his August 10, 2007 sworn statement as a "coerced confession," and claimed that his testimony was prepared as directed by the officer. According to the petitioner, much of what he wrote at the officer's direction was inaccurate, only partially true, or utterly false. However, these falsehoods were "required by [the officer] to be written precisely as he instructed."

On motion, counsel also challenges the validity of the sworn statement executed by the petitioner on August 10, 2007, referring to it as "a coerced and unconstitutional statement." Counsel argues that the petitioner's sworn statement was obtained via "unlawful threats and intimidation," and that his "right to counsel" was violated. Counsel states that the officer knew that the petitioner was represented by prior counsel, and that prior counsel was not present at the time the petitioner's sworn statement was executed.

Counsel contends that the petitioner was fearful when he made his sworn statement and did not feel free to refuse to comply with the officer. Counsel also repeated the petitioner's allegations to the effect that the language of his sworn statement was not his own, stating that the officer "then proceeded to present a sworn statement for Petitioner to fill out and instructed him as to what to say."

According to counsel, the officer "created a custodial atmosphere with [the] Petitioner to ensure his compliance," and his actions "amounted to an unconstitutional deprivation of the right to counsel." Therefore, according to counsel, the petitioner's sworn statement should be "suppressed" (i.e.,

⁴ The petitioner's administrative file indicates that prior counsel was provided with a copy of this statement at a hearing before the San Francisco Immigration Court on February 14, 2008.

⁵ The petitioner is referring to *Miranda v. Arizona*, 384 U.S. 436 (1966). However, in *Matter of Baltazar*, 16 I&N Dec. 108 (BIA 1977), the Board of Immigration Appeals stated that "[n]either the statute nor the regulations provide that an alien in deportation proceedings is entitled to have counsel present during the initial interrogation or receive *Miranda* warnings, nor are *Miranda* warnings required to be given in connection with civil proceedings under the immigration laws, even to an alien in custody." *Id.* at 108. In *Trias-Hernandez v. INS*, 528 F.2d 366 (9th Cir. 1975), the court noted that, in deportation proceedings, "[i]n light of the alien's burden of proof, the requirement that the alien answer non-incriminating questions, the potential adverse consequences to the alien of remaining silent, and the fact that an alien's statement is admissible in the deportation hearing despite his lack of counsel at the preliminary interrogation-*Miranda* warnings would be not only inappropriate but could also serve to mislead the alien." *Id.* at 368.

excluded from consideration). Counsel asserts that if the petitioner's sworn statement is "properly suppressed," this petition merits approval.

We do not dispute the fact that the petitioner has a right to be represented by counsel during immigration examinations, as specified in the regulation at 8 C.F.R. § 292.5(b). However, the petitioner does not allege, and the record does not establish, that the officer ever claimed otherwise. Nor is there any indication that the petitioner invoked his right to counsel and that his invocation was refused. There was also no obligation on the part of the officer to notify the petitioner of his right to counsel: USCIS is only required to inform an alien of his or her right to legal representation after placement into formal removal proceedings. See 8 C.F.R. § 287.3(c); *Samayoa-Martinez v. Holder*, 558 F. 3d 897 (9th Cir. 2009); *Matter of E-R-M-F- & A-S-M-*, 25 I&N Dec. 580 (BIA 2011).⁶ In this case, the petitioner was not placed into formal immigration proceedings until September 26, 2007, when the Form I-862, Notice to Appear was filed with the San Francisco Immigration Court.⁷ Accordingly, no violation of the petitioner's right to representation occurred.⁸

On motion, counsel also asserts that because the petitioner's sworn statement was involuntary, it should not be considered in these proceedings. Counsel's claim is mistaken because the "exclusionary rule" does not apply in civil immigration proceedings. See *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044-51 (1984); *Matter of Sandoval*, 17 I&N Dec. 77-83 (BIA 1979). Counsel's claim also fails because the record does not show that the petitioner's sworn statement was involuntary. The Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, has explained:

Where there is nothing in the record indicating that the alien's statement was induced by coercion, duress, or improper action on the part of the immigration officer, and where the petitioner introduces no such evidence, the bare assertion that a statement is involuntary is insufficient.

Samayoa-Martinez, 558 F. 3d at 902 (citing *Cuevas-Ortega v. INS*, 588 F. 2d 1274, 1278 (9th Cir. 1979) (internal punctuation omitted).

The record in this case contains no evidence, beyond his own assertions, that the petitioner's August 10, 2007 sworn statement was involuntarily. As noted previously, when he executed his statement

⁶ It is for this reason that *Castro-O'Ryan v. INS*, 847 F. 2d 1307 (9th Cir. 1988) and *Colindres-Aguilar v. INS*, 819 F. 2d 259 (9th Cir. 1987), cited by counsel on motion to reopen, are not on point. In both *Castro-O'Ryan* and *Colindres-Aguilar*, the aliens had already been placed into formal immigration proceedings and the legacy Immigration and Naturalization Service was required to inform them of their right to counsel.

⁷ See 8 C.F.R. § 1239.1(a) (proceedings commence with the filing of the Notice to Appear in Immigration Court); *Kohli v. Gonzales*, 473 F. 3d 1061, 1066 (9th Cir. 2007) (same).

⁸ Nor are we persuaded by counsel's implicit accusation of malfeasance by the officer contained in his assertion that the officer "intentionally confronted Petitioner at work because he knew Petitioner would feel vulnerable and embarrassed to resist the forced confrontation in a work setting." The petitioner's administrative file indicates that the officer first attempted to speak with the petitioner at his place of residence and visited his place of employment only after failing to locate him at home.

the petitioner acknowledged that he was making it freely, voluntarily, and willfully. The record shows that the petitioner is literate, was able to read the statement he wrote, and his handwriting and signature on the statement match his handwriting and signatures contained on other documents in his administrative file. Accordingly, the record does not support the petitioner's assertion that his sworn statement was involuntarily.

Battery or Extreme Cruelty

In his February 13, 2008 statement, the petitioner asserted that he and P-B- purchased a home together in Sacramento, California in April 2006. He recounted that it had become clear by July 2006 that they could not afford their mortgage payments, and they decided to sell the house to E-G-⁹ the father of P-B-'s son. According to the petitioner, P-B- told him that E-G- and his family wanted to convert the residence into a boarding house for elderly persons, and she convinced him that they had the financial means to do so. The petitioner agreed, trusted P-B- to prepare the necessary documentation, and signed the documents she presented to him.

The record contains a copy of a grant deed filed with the Sacramento County, California Recorder's Office on August 1, 2006. This deed was signed by both P-B- and the petitioner on July 28, 2006. The deed states clearly that P-B- and the petitioner granted their home to C-G-¹⁰. The notary public who notarized the deed on July 29, 2006 stated that both P-B- and the petitioner personally appeared and acknowledged that they had signed the document.

Although the grant deed specifically states "GIFT," the petitioner stated that it was his understanding that the property had actually been *sold* to E-G-'s family. As such, his continued receipt of mortgage bills was surprising. He claimed that he called P-B- and asked her why he was receiving bills after selling the home, and that she had no answer for him. He also claimed that after E-G-'s family received title to the house they rented it out and that, as such, they were able to receive rental income from a property for which he remained financially liable. According to the petitioner, his lender foreclosed on the home in November 2007. The petitioner closed his February 13, 2008 affidavit by stating that "[i]n exchange for my love and compassion I was manipulated, used and financially ruined." We note that the petitioner made no claims of any type of abuse other than this financial issue.

The petitioner's July 16, 2008 statement also focused on financial abuse. The petitioner claimed that P-B- and her mother lost a large sum of money gambling in January 2003 and asked him to request financial assistance from his father. He stated that his father provided them with financial assistance on ten separate occasions between February 2003 and July 2006. Again, the petitioner only referenced financial abuse.

⁹ Name withheld to protect individual's identity.

¹⁰ Name withheld to protect individual's identity. The relationship of C-G- to P-B- and the petitioner is not discussed, but the evidence of record, including the petitioner's statements and the fact that C-G- shares the same surname with E-G-, suggests that C-G- is E-G-'s father.

However, in his July 6, 2009 statement made in response to the RFE, the petitioner stated that P-B- called him names and told him he was worthless; yelled at him on two occasions; told him that she controlled his life; was deceitful; prevented him from having contact with his friends and family, except to ask his father for money, and only allowed him to have contact with her, her son, and her parents; did not share household belongings with him; did not allow him to use her computer; and did not share money with him even though he was caring for her son.

In his June 23, 2011 statement submitted on motion, the petitioner stated that although five years had passed since he and P-B- separated, he had remained single and unattached during that time due to his terror that another woman would treat him in the same manner as P-B-.

The petitioner's testimony does not establish that P-B- subjected him to battery or extreme cruelty during their marriage.

The petitioner's statements regarding his separation from P-B- are inconsistent. In his July 16, 2008 statement, the petitioner stated that although he and P-B- separated between January 2004 and May 2004, they remained in close contact with one another, and he characterized the separation as merely logistical, as he was working in southern California for several months. The petitioner's statement that "[P-B-] and I lived together as husband and wife from November 2002 until July 2006" further characterized this separation as one resulting from a job opportunity, not a separation due to marital problems. However, in his July 6, 2009 statement, the petitioner stated that he and P-B- were actually separated from September 2003 until April 2004, and that they had *no* contact during this time.¹¹ According to the petitioner, they separated after his mother witnessed P-B- yelling at him and encouraged him to separate from her. The petitioner's July 6, 2009 statement, therefore, differed from his earlier statement regarding both the nature and duration of their separation, as well as whether they remained in contact with one another during that time. The petitioner's July 6, 2009 statement is also internally inconsistent. At pages 3-4, the petitioner stated that after he and P-B- reunited in April 2004, and P-B- apologized for her prior behavior, "[their] relationship remained stable for two years" until August 2006, when "she reverted back to her abusive language that [he] had not heard her speak in more than two years." However, at page 8 of that same letter, the petitioner asserted that after their April 2004 reconciliation P-B- behaved in a loving manner for "about one year," after which "she reverted to her abusive ways and [he] found himself making frequent trips to spend time with [his] parents." These inconsistencies diminish the probative value of the petitioner's testimony.

Moreover, the petitioner's testimony fails to demonstrate that P-B-'s actions constituted battery or extreme cruelty. In his sworn statement executed on August 10, 2007, the petitioner indicated that any financial transactions made between the petitioner and P-B-'s family were made in exchange for P-B- agreeing to marry the petitioner for immigration benefits rather than as part of a larger

¹¹ This statement also conflicts with the petitioner's statements on the Form G-325A, Biographic Information, he submitted to USCIS on August 30, 2004, which did not indicate any time apart from P-B-.

pattern of abuse. Nor does August 1, 2006 grant deed establish any financial abuse, as the language of the deed is quite clear.

Although the petitioner alleged that, The record contains statements from his friends and family indicating that they were in contact with him during the marriage , which contradicts the petitioner's claim that P-B- isolated him from his friends and family. With regard to the petitioner's assertion that P-B- told him that she held his life in her hands, we note that the petitioner indicated in his July 6, 2009 letter that P-B- made this threat on, at most, two occasions.¹²

With regard to the other behaviors alleged by the petitioner in his latter statements, the record lacks detailed, probative information regarding specific occurrences of such behavior that would demonstrate that such actions constituted battery or extreme cruelty.

The statements of the petitioner's psychologist, friends, and family members, and counsel's assertions also fail to support the petitioner's claims of abuse.

In her August 21, 2009 letter [REDACTED] licensed marriage and family therapist, stated that she had been meeting with the petitioner since June 2009. According to [REDACTED] the petitioner told her that P-B- "regularly" threatened his immigration status and told him that she held his life in her hands; controlled their finances and gambled away their money; and was both verbally and physically abusive. However, [REDACTED] description of the petitioner's account of the abuse to which he was allegedly subjected by P-B- differs significantly from his own account. First, as noted previously, the petitioner stated in his own testimony that P-B- told him she held his life in her hands on, at most, two occasions. Second, although [REDACTED] stated that the petitioner told her P-B- was physically abusive, the petitioner did not describe any battery in any of his own statements.

The letters from the petitioner's mother and father, which are respectively dated June 2 and June 11, 2009, also do not establish his claim. The petitioner's parents both alleged that the petitioner's mother personally witnessed P-B- yelling at the petitioner in September 2003; that P-B- and her family took advantage of and used the petitioner; that the petitioner often slept at their house when he could not stand to be with P-B-; and that they are happy the petitioner is now divorced from P-B. The petitioner's August 10, 2007 sworn statement in which he admitted that the financial transactions between the couple were made in exchange for the marriage-related immigration benefits undermines his parents' claim that P-B- took advantage of him. Their vague references to yelling and threatening lacks detail, as does their suggestion that the petitioner "suffered a lot." Finally, the fact that these two letters are nearly identical to one another raises questions as to their actual authorship and diminishes their probative value.

¹² In relevant part, the petitioner stated the following: "The *second time* that [P-B-] used the derogatory expression in the Tagalog language meaning 'I am the one who controls your life!' was around September 2003 on the occasion she suffered significant losses from gambling [emphasis added]."

Nor does the testimony of [REDACTED] the petitioner's sister, establish that the petitioner was abused by P-B- during their marriage. Although [REDACTED] stated in her November 22, 2004 letter that she had "been the witness of [the petitioner's] and [P-B-'s] love and wonderful life together," in her November 14, 2009 letter she claimed the petitioner's began living in "agony" after he moved into P-B-'s home. [REDACTED] claimed further in her November 14, 2009 letter that P-B- was demanding, bossy, intimidating, manipulative, and controlling. According to [REDACTED] P-B- insulted and cursed the petitioner; did not allow the petitioner to eat enough food; threatened him; told him that she controlled his life; and destroyed his finances. She also claimed that the petitioner did not want to buy the house in Sacramento. With regard to the claims of financial fraud and abuse, we note again that in his sworn statement executed on August 10, 2007, the petitioner indicated that any financial transactions made between the petitioner and P-B-'s family were made in exchange for P-B- agreeing to marry the petitioner for immigration benefits, rather than as part of a larger pattern of abuse. Regarding her claim that P-B- did not allow him to eat enough food, the petitioner made no such claim himself. Although she referenced "outbursts" and "anger towards him," she did not discuss any incidents in probative detail. Nor did she provide any clarification or examples to support of her claims of insults, threats, manipulation, or control. Finally, although [REDACTED] asserted that the petitioner was "completely opposed" to purchasing a home with P-B-, we note that the petitioner claimed precisely the opposite in his February 13, 2008 letter: "[b]y January 2006, [P-B-] and I began shopping for a home of our own. *This was very important to me* as I felt it necessary that [P-B-] and I be able to live our own lives and build our own family. . . .[emphasis added]."

Although the petitioner stated in his July 6, 2009 letter that he "was not permitted to go out and meet with [his] friends on a social basis," [REDACTED] stated in his November 10, 2009 letter that the petitioner "occasionally would visit me in my house in Sacramento." While [REDACTED] also discussed the alleged financial fraud and abuse, we note again that in his sworn statement executed on August 10, 2007, the petitioner indicated that any financial transactions made between the petitioner and P-B-'s family were made in exchange for P-B- agreeing to marry the petitioner for immigration benefits rather than as part of a larger pattern of abuse. Accordingly, [REDACTED] letter does not demonstrate that P-B- abused the petitioner during their marriage.

Nor does [REDACTED] testimony establish that P-B- abused the petitioner during their marriage. In his November 12, 2009 letter,¹³ [REDACTED] stated that he resided briefly with P-B-, the petitioner, and P-B-'s parents between December 2002 and April 2003, and that during this time he witnessed P-B- calling the petitioner names and swearing at him; directed her anger at him after suffering gambling losses; demanded that he request financial assistance from his father; told him that she controlled his life; was possessive; and that, "[t]here were occasions where we had to live on a noodle diet." [REDACTED] alleged further that in June 2003, after he had moved out of the house, he called the petitioner and tried to visit several times, but P-B- told him that the petitioner was not allowed to leave the house, and that he overheard P-B- telling the petitioner that if he left the house he would not be permitted to return. [REDACTED] claim, however, conflicts with the petitioner's July 16, 2008 statement that he and P-B- were not living together between April 2003

¹³ [REDACTED] July 27, 2011 letter is nearly identical to his February 12, 2009 letter.

and July 2003. With regard to [REDACTED] allegations implying that P-B- did not afford the petitioner proper nourishment, we note that the petitioner made no such claims himself. Furthermore, with regard to [REDACTED] claims indicating financial abuse, we note once again that in his sworn statement executed on August 10, 2007, the petitioner indicated that any financial transactions made between the petitioner and P-B-'s family were made in exchange for P-B- agreeing to marry the petitioner for immigration benefits.

Considered in the aggregate, the relevant evidence fails to demonstrate that P-B- subjected the petitioner to battery or extreme cruelty during their marriage as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Entry into Marriage

In reaching his determination that the petitioner had failed to demonstrate that he married P-B- in good faith, the director relied primarily upon the petitioner's sworn statement executed by the petitioner on August 10, 2007. As noted previously, in that statement the petitioner admitted that the marriage was never consummated and that he married P-B- for the purpose of obtaining immigration benefits. The regulation at 8 C.F.R. § 204.2(c)(1)(ix) prohibits approval if the petitioner entered into the marriage for the purpose of circumventing the immigration laws. For this reason alone, the record supports the director's decision to deny the petition on this ground. Even if the petitioner had not admitted to immigration-related marriage fraud, the remaining, relevant evidence is insufficient to demonstrate his good-faith entry into the marriage.

In his February 13, 2008 letter, the petitioner stated that he met P-B- in August 2001 on the internet, and that they communicated via telephone and the internet prior to meeting in person at a restaurant in Oakland, California. He stated that he and P-B- spent a great deal of time together between October 2001 and April 2002 at an establishment in San Francisco called Twin Peaks. According to the petitioner, he quit college in July 2002 and his sister, with whom he had been living, made him leave her home because she was angry over his decision. The petitioner claimed that he lived in his car for two months, and that P-B- invited him to live with her because she was concerned about him. He recounted that he and P-B- became even closer very quickly, and that he proposed marriage in November 2002. They married on November 30, 2002 in Reno, Nevada. In his July 16, 2008 letter, the petitioner repeated his earlier assertions and briefly described their wedding, stating that they married at the Heart of Reno Chapel in the presence of approximately 15 friends and family members. The petitioner's testimony does not establish that he married P-B- in good faith, as it lacks detailed, probative information regarding their courtship, wedding ceremony, shared residence and experiences, apart from the alleged abuse.

Nor does the remaining documentary and testimonial evidence establish the petitioner's claim. The record indicates that P-B- and the petitioner twice filed joint income tax returns, but this fact alone does not demonstrate that the petitioner married P-B- in good faith. Although the record contains a joint car insurance policy effective on April 9, 2003, and valid through October 7, 2003, the policy was issued shortly before the beneficiary's Form I-130 was filed and during a period of time which, according to the petitioner, the couple was not living together. Another joint car insurance policy

entered into effect on January 7, 2005, shortly before an immigration interview on January 13, 2005 regarding the petitioner's application for adjustment to lawful permanent resident status based on his marriage to P-B-.

The pictures of what appear to be the couple's wedding day document the event, but are not evidence of the petitioner's intentions upon entering into the marriage.

Nor does the evidence of a joint banking account demonstrate the petitioner's good faith entrance into the marriage. First, the record contains only one statement, covering the period beginning November 6, 2004 and ending December 7, 2004, and there is no evidence that both individuals had access to, and used, this account. Second, this statement was addressed to the couple at an address located on West Altamino Avenue in Sacramento, and the petitioner makes no claim on any of the three Forms G-325A contained in the record that he ever lived at that address.

Nor do the lease agreements establish that the petitioner married P-B- in good faith. Although the petitioner's signature appears on the lease dated June 1, 2003, he stated in his July 16, 2008 letter that he and P-B- did not live together between April 2003 and July 2003. As the petitioner did not sign the November 1, 2003 or April 20, 2004 lease agreements, they are not evidence of his good faith. Although the petitioner did sign the lease agreement dated December 18, 2004, this agreement was signed shortly before an immigration interview on January 13, 2005 regarding the petitioner's application for adjustment of status to lawful permanent residency based on his marriage to P-B-.¹⁴

Although the record contains letters from P-B- and her parents, [REDACTED]

[REDACTED] and the petitioner's parents attesting to the bona fides of the marriage, none of these individuals provided any meaningful details about the couple's relationship. Accordingly, they do not aid the petitioner in establishing his good faith entry into the marriage.

Considered in the aggregate, the relevant evidence does not establish that the petitioner married P-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(c) of the Act and Ineligibility for Immediate Relative Classification

Beyond the decision of the director, section 204(c) of the Act further bars approval of this petition. Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

¹⁴ The couple originally appeared for an interview in conjunction with the petitioner's immigration processing on November 23, 2004. They were told at that time that a second interview would be necessary, and the second interview took place on January 13, 2005. The December 18, 2004 lease agreement was signed in the interim period between the two interviews.

¹⁵ The correct spelling of this individual's name is not clear.

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . , by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975). The evidentiary deficiencies surrounding the petitioner's documentary evidence of his allegedly good-faith entry into marriage with P-B- was set forth above. The petitioner's testimony regarding his marriage is inconsistent and he failed to provide detailed, probative information regarding the couple's courtship, wedding ceremony, shared residence, and experiences together.. Furthermore, the petitioner himself admitted in his August 10, 2007 sworn statement that he married P-B- for the purpose of obtaining immigration benefits, and that they never consummated their marriage.

An independent review of the entire record shows that section 204(c) of the Act bars approval of this petition, as the record contains substantial and probative evidence that the petitioner entered into marriage with P-B- for the purpose of evading the immigration laws of the United States. Because the petitioner has not complied with section 204(c) of the Act, he is also ineligible for immediate

relative classification based upon his marriage to P-B- and is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for that additional reason. 8 C.F.R. § 204.2(c)(1)(iv).

Conclusion

The petitioner has failed to overcome the director's grounds for denial and has not established that P-B- subjected him to battery or extreme cruelty during their marriage and that he married her in good faith. Beyond the decision of the director, section 204(c) of the Act bars approval of this petition, and the petitioner is consequently ineligible for immediate relative classification based upon his marriage to P-B-.¹⁶ Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act 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 appeal remains dismissed and the petition remains denied.

¹⁶ 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 the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).