

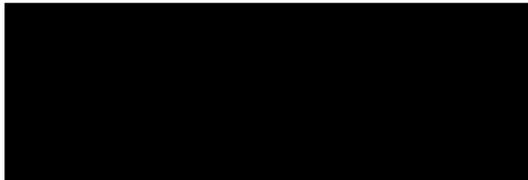
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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DATE: **JAN 24 2012** Office: VERMONT SERVICE CENTER

FILE:

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 Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and 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 in this matter had not established that he had: been subjected to battery or extreme cruelty perpetrated by the United States citizen; or entered into the marriage in good faith. New counsel for the petitioner submits a brief on certification.

### *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:

(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*

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The petitioner is a citizen of Tunisia who entered the United States in B-2 visitor status on November 11, 1999. He married E-C-,<sup>1</sup> a citizen of the United States on April 10, 2000.<sup>2</sup> E-C- filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner on April 13, 2000. The petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on October 22, 2004. The director issued two requests for evidence (RFE) and upon review of the petitioner's responses, denied the petition on July 9, 2008, determining the petitioner had not established that he had entered into the marriage in good faith.

In the AAO's May 15, 2009 decision on appeal, the AAO concurred with the director's determination and also found that the petitioner failed to establish a joint residence with E-C- during marriage or that he had been battered or subjected to extreme cruelty by his spouse during their marriage. However, the AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).<sup>3</sup> Upon remand, the director issued a NOID on February 23, 2010, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish joint residence with E-C-, to establish he had been subjected to battery or extreme cruelty perpetrated by E-C-, and to establish that he had entered into the marriage in good faith. The petitioner failed to respond to the NOID. On August 25, 2010, the director re-issued the NOID and upon review of the evidence submitted in response, denied the petition on July 13, 2011, determining that the petitioner had established a joint residence with E-C- during the marriage but had failed to establish that he had been subjected to battery or extreme cruelty during his marriage or that he had entered into the marriage in good faith. The director certified

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

<sup>2</sup> On the Form I-360, the petitioner states that he and E-C- were married on March 17, 2000; however, it appears this was a religious ceremony performed under the laws of Islam. The petitioner's civil and licensed marriage occurred on April 10, 2010.

<sup>3</sup> On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, after the filing and adjudication of this petition.

his decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. New counsel for the petitioner timely submits a brief on certification. The record is considered to be complete as it now stands.

*Battery and/or Extreme Cruelty*

As previously noted by the AAO, the petitioner in a September 20, 2004 affidavit stated that E-C- quit her job in January 2001 and he was forced to obtain a second job to support the household. The petitioner indicated that he injured his back in September 2002 and was placed on disability shortly thereafter. As the petitioner's worker's compensation benefit was insufficient to support the household, he asked E-C- to find a job; however, she responded by screaming at him, calling him a loser, and telling him that he was not man enough to take care of the house. The petitioner also noted that as he was unable to sexually perform, E-C- began having extramarital affairs. The petitioner testified that, due to E-C-'s cruelty and mental abuse as well as his disability, he became "a mental and physical wreck," and contemplated suicide. In April 2003, the petitioner indicated that after a visit to the doctor he returned home to find that E-C- had left the apartment and taken most of the furniture.

The petitioner's brother, in a September 20, 2004 affidavit, testified that he had personally witnessed E-C- calling the petitioner names and that he knew that E-C- had extramarital affairs. A second affiant also testified that he personally witnessed several incidents in which E-C- embarrassed the petitioner and made him cry and once E-C- had emptied a bowl of food onto the petitioner in front of everyone at a party.

As the AAO previously found, the record did not include evidence that the petitioner had been subjected to battery. There were no specific incidents described by either the petitioner or the witnesses on his behalf, which included the detail necessary to establish that the petitioner had been subjected to battery. Regarding the petitioner's claim that he was subjected to extreme cruelty, the AAO found that name calling, E-C-'s extramarital affairs, and food being dumped on the petitioner at a party as described, were insufficient to establish that the petitioner had been subjected to extreme cruelty as set out in the statute and regulation.

In response to the director's NOID requesting additional evidence on this issue, the petitioner provided a September 22, 2010 statement. The petitioner repeated that E-C-'s name calling and failure to stand by him after he was injured caused him to contemplate suicide and that her abandonment combined with his physical pain from his injuries put his life in a tailspin. The petitioner also provided affidavits from two additional individuals. One affiant noted that E-C- abandoned the petitioner during his time of need and the second indicated that the petitioner mentioned that E-C- was drinking alcohol and would disappear for days instead of helping him get better.

Upon review of the information submitted in response to the NOID, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by E-C-.

On certification, counsel for the petitioner asserts that E-C-'s actions rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Counsel notes that the name calling occurred when the petitioner was in a physically vulnerable condition due to his back injury, a time when the petitioner expected he would receive emotional support. Counsel concludes that E-C-'s actions constituted extreme cruelty.

Upon review of the totality of the record, the petitioner has not established that he was subjected to battery or extreme cruelty as defined in the statute and regulation. The record, including the information submitted in response to the NOID, does not include detailed evidence that the petitioner was subjected to battery. Similarly, the petitioner has not provided sufficient detail regarding E-C-'s actions to conclude that they constituted extreme cruelty. The petitioner's testimony in response to the NOID, while expressing his hurt at E-C-'s actions after his injury, is insufficient to establish that he was subjected to extreme cruelty. He does not provide specific testimony of the verbal abuse allegedly suffered and he does not specifically describe instances of exploitation, forced social isolation, psychological abuse, or control perpetrated by E-C-. The claims made by the petitioner fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that E-C-'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 him.

Contrary to counsel's assertion, the petitioner has not established that E-C-'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 E-C-'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 record is simply deficient in this regard.

Based upon a review of the totality of the evidence in the record, the petitioner has not established that he was subjected to battery or conduct that constitutes extreme cruelty as defined in the statute and regulation.

#### *Good Faith Entry Into Marriage*

The petitioner initially did not provide any information in his September 20, 2004 or September 6, 2005 personal statements regarding his introduction to or interactions with E-C- prior to marriage. The petitioner's brother in a September 20, 2004 affidavit declared generally that he was aware of the petitioner's marriage to E-C- and that he visited the petitioner and E-C- while they were together. The petitioner also provided photocopies of Internal Revenue Service (IRS) federal tax returns for 2000 and 2001. The tax forms showed the petitioner and E-C- as married filing jointly and both the petitioner and E-C- were claimed as exemptions; however, the record did not indicate the forms were actually filed with the IRS.

In the director's March 5, 2008 RFE the director noted that the copies of tax returns initially provided had not been obtained from the Internal Revenue Service (IRS), nor were they receipts stamped by the IRS. Accordingly, in his June 2, 2008 response to the RFE, the petitioner submitted information from the IRS regarding his income tax filings for the tax years 2000, 2001, 2002, and 2004. The certified information submitted by the petitioner from the IRS in 2008 conflicts with the photocopies of the tax returns the petitioner submitted in 2004. The information from the IRS indicates that the tax returns actually filed by the petitioner were not joint filings and that the petitioner claimed himself as the only exemption. In addition, the IRS filed tax returns showed a significant decrease in the adjusted gross income category than the photocopies submitted by the petitioner in 2004, apparently showing only the petitioner's adjusted gross income and excluding E-C-'s income.

The petitioner also provided copies of two leases allegedly entered into by the couple: (1) a lease for an apartment on [REDACTED] with a commencement date of March 1, 2000; and (2) a lease for an apartment on [REDACTED] with a commencement date of November 15, 2001. The record also included a copy of a vehicle insurance policy issued to the petitioner and his brother in November 2004 that listed the petitioner, his brother, and four other individuals including E-C- on the policy. The petitioner further provided four affidavits from friends and family stating generally that the affiants knew the petitioner and E-C- and had visited them at their residence. The record further included a March 21, 2000 letter sent to the petitioner and E-C- to the Gramercy address discussing the balance due for the couple's wedding reception held on March 19, 2000.

In a July 9, 2008 decision, the director determined that the petitioner had not established that he had entered into the marriage in good faith.

On appeal, the petitioner provided an August 7, 2008 affidavit stating that he and E-C- met in December 1999 in Las Vegas, Nevada, the city that he was living in at the time. The petitioner indicated that before E-C- returned to her home in Los Angeles, California they exchanged information and in the middle of January 2000 he visited E-C- in Los Angeles, California. The petitioner indicated that he stayed in Los Angeles for two weeks, partly with E-C- and partly with a cousin and that as they were in love E-C- persuaded him to move to Los Angeles. He noted that he moved to Los Angeles in late February 2000 and stayed with his cousin until he found a place in the same building - [REDACTED] whereupon E-C- moved in with him. The petitioner stated that he and E-C- lived at the [REDACTED] address from February 1, 2000 until July 31, 2000 and then moved to [REDACTED] from August 1, 2000 until October 30, 2001 and then to [REDACTED] from November 1, 2001 until March 2003. The petitioner noted that the couple was madly in love and his belief that if he had not been in an accident causing his disability the marriage would not have ended.

The petitioner provided two additional affidavits from a neighbor and a friend who both declared generally that they knew the couple and interacted with them.

In the AAO's previous decision, numerous inconsistencies in the petitioner's testimony and discrepancies in the documentary evidence were set out. The AAO observed that the

photocopies of the 2000 and 2001 tax returns initially submitted to USCIS by the petitioner in 2004 were not the tax returns actually filed with the IRS. The AAO noted that it appeared that the copies of tax returns submitted in 2004 were produced by the petitioner as evidence of shared financial responsibilities in an attempt to bolster his case before USCIS. The AAO found that the “discrepancies between what the petitioner told USCIS he had filed with the IRS (i.e., the copies of the 2000 and 2001 tax returns) and what was actually filed with the IRS (i.e., the information contained in the petitioner’s 2008 submission) severely undermines the credibility of the petitioner’s testimony.” In addition, the AAO found inconsistencies in the petitioner’s statements regarding when he moved to Los Angeles from Las Vegas, when he and E-C- first began to reside together, and when they moved from place to place. The petitioner’s August 7, 2008 personal statement contains inherent inconsistencies as well as conflicts with the copies of leases provided. In addition, the AAO questioned the authenticity of the March 21, 2000 letter allegedly sent to the petitioner and E-C- to their [REDACTED] address to collect payment for a wedding reception held prior to the marriage and dated prior to the couple’s lease for the [REDACTED] apartment.

The AAO found that the questionable nature of both the petitioner’s own testimony and his evidence undermined the credibility of his claim that he entered into the marriage in good faith. Upon review of the totality of the evidence submitted and the numerous inconsistencies and discrepancies in the evidence, the AAO determined the petitioner had failed to establish that he entered into marriage with E-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

In response to the NOID issued by the director on August 25, 2010, the petitioner provided an additional personal statement. The petitioner noted that he met E-C- on New Year’s Eve, December 31, 1999, at a party on the strip in Las Vegas, Nevada. The petitioner stated that he felt it was a “‘sign’ to meet your beloved on New Years and so close to the change in the New Year.” The petitioner reiterated that they exchanged phone numbers and he felt it would be a great story to tell their children that the couple met on New Year’s Eve. The petitioner stated that he planned a trip to Los Angeles a week after he met E-C-, called her when he arrived and they went out on a date to a French restaurant. The petitioner declared that he learned they had many interests in common and the couple dated “exclusively for the next few months and [they] started living together by February 1, 2000” at the [REDACTED] address. The petitioner indicated the couple had a religious wedding ceremony as E-C- was willing to learn his traditions and then had a civil ceremony. The remainder of the petitioner’s statement relates to his claim of abuse.

The petitioner provided an additional affidavit from a friend who declared that she and her husband would go out with the petitioner and E-C- and they would all get together at each other’s apartments. Another affiant declared that the couple visited the restaurant he worked at and that he also spent time at the petitioner’s and E-C-’s home and at the movies and clubs with other friends.

Upon review of this information, as well as the auto insurance information previously submitted, two receipts, and the petitioner's medical paperwork, the director determined the petitioner had not established he married E-C- in good faith.

On certification, counsel for the petitioner asserts that the director did not indicate that the petitioner's statements included inconsistencies and the petitioner's affidavits and those of his friends evidence the couple's cohabitation and demonstrates that the petitioner entered into the marriage in good faith.

We disagree. Upon review of the evidence of the totality of the record, the petitioner has not offered explanations regarding the numerous inconsistencies set out by the AAO in the May 15, 2009 decision. The petitioner has not explained why he would submit clearly false IRS tax returns to USCIS. Nor has the petitioner provided probative, consistent, and credible testimony establishing his intent when entering into the marriage. The AAO observes that the petitioner's statement in response to the NOID again fails to provide a consistent chronological timeline regarding his introduction to E-C-, his move to Los Angeles, as well as his residences with and without E-C-. This additional statement, like the petitioner's previous statements, does not provide the requisite underlying detail necessary to support and ascertain his actual intent when entering into the marriage. The record does not contain consistent, probative testimony regarding his courtship with E-C-, the types of activities they enjoyed together in detail, or his interactions with E-C-. 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). The petitioner's testimony does not convey the meaningful detail necessary to ascertain the petitioner's intent when entering into the marriage.

Regarding the documentary evidence in the record in addition to the initially submitted falsified IRS tax returns, the limited documents provided are not sufficient indicia of the couple's alleged life together. Upon review of the totality of the record in this matter, the record does not include sufficient probative evidence establishing that the petitioner entered into marriage with E-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Conclusion*

The petition will be denied for the reasons stated above, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the July 13, 2011 decision of the director is affirmed and the petition remains denied.

**ORDER:** The director's decision of July 13, 2011 is affirmed. The petition remains denied.