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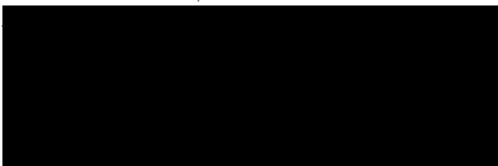
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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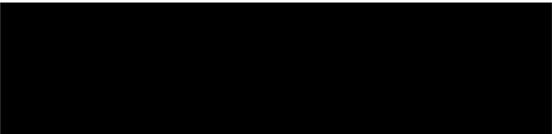
Office: VERMONT SERVICE CENTER

Date: DEC 27 2007

IN RE: Petitioner: [REDACTED]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Maura Deadrick*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (2007), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that he resided with his former wife, married her in good faith and that his former wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits an additional letter from his counselor.

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 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 further explicated 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 further explicated 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Turkey who entered the United States on February 25, 2001 as a nonimmigrant student (F-1). On February 9, 2004, the petitioner married D-W-<sup>1</sup>, a U.S. citizen, in Texas. D-W- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on May 5, 2005 due to abandonment. The petitioner and his wife were divorced on February 25, 2005.<sup>2</sup> On August 25, 2005, the petitioner was served with a Notice to Appear for removal proceedings charging him under section 237(a)(1)(C) of the Act for having failed to maintain or comply with the conditions of his nonimmigrant status. The petitioner remains in proceedings before the Houston Immigration Court and his next hearing is scheduled for January 25, 2008.

The petitioner filed the instant Form I-360 on May 8, 2006. On October 12, 2006, the director issued a Request for Evidence (RFE) of the requisite abuse, joint residence and good faith marriage. The petitioner, through counsel, submitted additional evidence. On April 24, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish the requisite abuse, joint residence and good faith marriage. The petitioner, through counsel, timely responded to the NOID with further evidence. On July 17, 2007, the director denied the petition on the grounds cited in the NOID. The petitioner timely appealed.

On appeal, the petitioner does not cite any errors in the director's decision, but submits an additional letter from his counselor. We concur with the director's determinations. The additional letter submitted on appeal fails to overcome the grounds for denial. Beyond the director's decision, the petitioner has also failed to demonstrate that he had a qualifying relationship with his former wife and was eligible for immediate relative classification based on such a relationship.

#### *Joint Residence*

We affirm the director's determination that the petitioner failed to establish that he resided with his former wife. The record contains the following, relevant evidence:

- Three letters from the petitioner;
- Affidavits from the petitioner's friends, [REDACTED] and [REDACTED];
- Copies of the driver's licenses of the petitioner and his former wife; and

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

<sup>2</sup> District Court of the [REDACTED]

- The Forms G-325A, Biographic Information, of the petitioner and his former wife, both dated March 4, 2004 and submitted in conjunction with the Form I-130 petition filed by the petitioner's former wife on his behalf and his corresponding Form I-485, Application to Adjust Status.

On the Form I-360, the petitioner stated that he lived with his former wife from the day of their marriage on February 9, 2004 until December 20, 2005 and that their last joint residence was an apartment on Gulfton in Houston, Texas. In his first and second letters, the petitioner stated that the former couple rented an apartment together, but his former wife did not want to be added to the lease because she did not want to be responsible for any rent. The petitioner further stated that after their separation, he returned home to find that his former wife had "torn up all [their] pictures, many other important documents, and letters [he] had received from [his] family." In his third letter, the petitioner explained that utilities were included in his rent and he did not obtain a home telephone until October 1, 2005. The petitioner does not further describe the former couple's allegedly joint residence in any detail. The petitioner also fails to explain why he stated on the Form I-360 that he lived with his former wife until December 20, 2005, although they were divorced on February 25, 2005 and he stated in his first and second letters that his wife left him in November 2004.

The remaining, relevant evidence also fails to establish the requisite joint residence. While the petitioner's driver's license lists his address as the Gulfton residence, the license of the petitioner's former wife lists a different address even though the expiration date of her license was six months after the former couple's marriage. The Forms G-325A of the petitioner and his former wife state that they both lived at the Gulfton residence beginning in February 2001, although the petitioner stated on the Form I-360 that he did not begin residing with his wife until three years later, on February 9, 2004.

The affidavits of the petitioner's friends focus on the alleged abuse and provide no probative information regarding the former couple's allegedly shared residence. Only two affiants, even mention the petitioner's residence with his former wife. Mr. [REDACTED] states, "I attempt[ed] to visit him several times at his house, but unfortunately, his wife wasn't welcoming at all, so I actually quit visiting him at home." Mr. [REDACTED] does not state the former couple's address or describe any of his visits in detail. Mr. [REDACTED] states that he once picked the petitioner up from his home "after his wife kick[ed] him out of his place." Mr. [REDACTED] does not discuss this incident in detail and does not indicate that he actually entered the petitioner's residence on that or any other date.

On appeal, the petitioner provides no further, relevant testimony or documentation. The relevant testimony submitted below lacks probative detail sufficient to establish the requisite joint residence. In addition, the former couple's divorce decree and the Forms G-325A of the former couple contradict the petitioner's own statement of the duration of their allegedly shared residence. Accordingly, the petitioner has failed to demonstrate that he resided with his former wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### *Good Faith Entry into Marriage*

We affirm the director's determination that the petitioner failed to demonstrate that he entered into marriage with his former wife in good faith. The same evidence listed in the preceding section is also relevant to this issue with the addition of four letters from the petitioner's psychotherapist, Frank L. Simcik. In his first and second letters, the petitioner states that he met his former wife at a grocery store, they talked, exchanged telephone numbers and began dating. The petitioner reports that the former couple decided to get married after a couple of months. The petitioner describes the first few months of the former couple's marriage as "really positive," but explains that his wife's behavior soon changed. In his third letter, the petitioner explains that his wife refused to put her name on his lease and open a joint bank account with him because she "did not want to be responsible for anything." He also notes that all utilities were included in his rent.

Nonetheless, the petitioner does not provide detailed, probative testimony sufficient to demonstrate his good faith in entering the marriage. The petitioner does not describe the former couple's courtship, decision to marry, wedding or any of their shared experiences (apart from the alleged abuse) in probative detail. He also fails to fully describe his intentions in entering the marriage. Rather, the petitioner generally states, in his first two letters, "We had love and understanding in our marriage" and, in his third letter, "I used to love her. I thought I had found the right person."

The testimony of the petitioner's friends also fails to provide probative information sufficient to establish his claim. As previously noted, the petitioner's friends primarily discuss the alleged abuse and provide no information about the petitioner's behavior and expressed intentions prior to and during his marriage. Mr. [REDACTED] states that the petitioner told him about his dates with his former wife during the former couple's courtship, but Mr. [REDACTED] does not provide any further details and explains that he never met the petitioner's wife because he and the petitioner "do not have the opportunity to socialize" outside of work. In his three most recent letters, Mr. [REDACTED] states his belief that the marriage was "legitimate" and that the petitioner "loved his wife," but Mr. [REDACTED] indicates that his conclusion is based solely on the petitioner's statements during counseling sessions that began over a year after the former couple's divorce.

In sum, the relevant evidence fails to provide detailed, probative information sufficient to establish the petitioner's entry into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Battery or Extreme Cruelty*

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- Three letters from the petitioner;
- Affidavits from the petitioner's friends, Mr. [REDACTED] Mr. [REDACTED] Mr. [REDACTED] Mr. [REDACTED]

Mr. [REDACTED] and Ms. [REDACTED]

- Three letters from the petitioner's psychotherapist, Mr. [REDACTED] submitted below and a fourth letter dated August 13, 2007 and submitted on appeal; and
- Undated and uncaptioned photographs of the top of the petitioner's head, his face, arm and leg.

In his first letter, the petitioner states that a few months after their marriage, his former wife became rude and insulting and made fun of his religion. The petitioner reports that his wife would bring male friends to their home to drink with her and that when he asked her to stop, she yelled at him and said she would do as she wanted. On one occasion in June 2004, the petitioner says that he found money missing from his wallet and when he asked his former wife if she had taken it, she scratched, hit, cussed and insulted him. The petitioner states that he spent the night at a friend's home, as he did on many occasions during his marriage.

In September 2004, the petitioner reports that he came home from work and found his wife in bed with another man. When he confronted her, the petitioner states that his wife told him to leave her alone or she would "call immigration on" him. In October 2004, the petitioner reports that his wife began staying away from their home for days at a time without telling him where she was going. In November 2004, the petitioner states that he called his former wife's cellular telephone and a man answered and told the petitioner that he was the boyfriend of the petitioner's former wife. The petitioner says that both his former wife and her boyfriend yelled at him over the telephone. The petitioner states that his wife returned the next day and started yelling at him when he suggested they seek counseling. The petitioner reports that his wife began hitting him, but he managed to get away from her and left their apartment. When he returned, the petitioner states that his former wife had taken all the former couple's belongings, destroyed other things and had torn up their pictures and other important documents. When the petitioner tried to contact his former wife, he reports that her boyfriend threatened to beat the petitioner if he did not stop calling her.

In his second letter, the petitioner explains that he did not file a police report because he was ashamed, embarrassed and degraded by his wife's assaults. In his third letter, the petitioner further explains: "When she beat me I did not go to the police. . . . I was trying to save my marriage . . . . In my culture we are very proud men. If we have a family problem we do not call the authorities and make reports. This is an embarrassment in our culture."

The petitioner further states that the photographs show "some old injuries, scars on [his] body" and that he has lost his hair and gained weight because of the stressful relationship with his former wife. The petitioner provides no further explanation of the photographs and does not state the date they were taken. The photographs show thinning hair on the top of his head and discoloration and faint, red lines on the petitioner's leg, arm and face. Without the dates and further description of the photographs, we cannot conclude that the petitioner's former wife caused the thinning hair and physical marks. We note that the petitioner submitted the photographs with his response to the RFE on January 5, 2007, over two years after he states that he and his former wife separated.

The petitioner's friends attest to the petitioner's troubled marriage, but their testimony fails to provide probative information sufficient to establish that the petitioner's former wife subjected him to battery or extreme cruelty. Mr. [REDACTED] states that he was present on one occasion when the petitioner's former wife "started talking crazy to him calling him names," but Mr. [REDACTED] provides no further details and does not describe any other incidents of alleged abuse that he witnessed. Mr. Rivas attests that he picked up the petitioner on one, unspecified occasion after the petitioner's former wife kicked him out and that on other, unspecified occasions he saw bruises and scratches on the petitioner and once heard the petitioner's former wife yelling at him. Yet Mr. [REDACTED] fails to describe any of these incidents in probative detail. As previously discussed, Mr. [REDACTED] states that he ceased visiting the petitioner at his home because the petitioner's former wife was "unwelcoming," yet Mr. [REDACTED] does not describe any abuse that he personally observed. Mr. [REDACTED] recalls that the petitioner would sometimes be depressed at work because of his marital problems and that Mr. [REDACTED] once overheard a woman he believed to be the petitioner's former wife yelling and cursing the petitioner over the petitioner's speaker telephone at their workplace. Mr. [REDACTED] also states that the petitioner would receive disturbing telephone calls from his former wife at work. Ms. [REDACTED] states that the petitioner's former wife was abusive to him, but she describes no incidents of abuse that she witnessed and provides no further, probative information.

Mr. [REDACTED] letters are also of little probative value. In his June 29, 2006 letter, Mr. [REDACTED] states that the petitioner "began counseling on 6-19-06 to deal the [sic] post traumatic feelings that occurred from his divorce in 2005. He is showing depressed feelings that affected his self confidence." In his October 24, 2006 letter submitted in response to the RFE, Mr. [REDACTED] states that the petitioner "continues to have post traumatic feelings that occurred from the abuse from his wife." Mr. [REDACTED] indicates that the change in his description was "[p]er [the petitioner's] request more [sic] clear evidence of effects of post traumatic syndrome due to emotional cruelty and infidelity." In his May 10, 2007 letter submitted in response to the NOID, Mr. [REDACTED] states that the petitioner "has continued to demonstrate some improvement from the post traumatic feelings that occurred from the severe abuse and humiliation of his marriage and resulting divorce." For the first time, Mr. [REDACTED] explicitly diagnoses the petitioner with post traumatic stress syndrome and adjustment disorder with anxiety and depression. In his August 13, 2007 letter submitted on appeal, Mr. [REDACTED] reiterates that the petitioner has been counseled for the effects of the abuse and humiliation of his marriage and repeats his diagnosis.

Mr. [REDACTED] letters attest to the effects of the petitioner's marital problems on his mental health and we do not question Mr. [REDACTED] expertise in this regard. However, Mr. [REDACTED] letters, the testimony of the petitioner and his friends and the undated and uncaptioned photographs fail to establish that the behavior of the petitioner's wife rose to the level of battery or extreme cruelty, pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes actions such as forceful detention and psychological or sexual abuse or exploitation. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner's former wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### *Qualifying Relationship*

Beyond the decision of the director, the petitioner has also failed to establish that he had a qualifying relationship with a U.S. citizen, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act. An alien who has divorced a United States citizen remains eligible to self-petition only if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc) (2007). Although the petitioner in this case filed the instant Form I-360 within two years of his divorce, he has not established that his wife subjected him to battery or extreme cruelty. Accordingly, he has also not demonstrated that his divorce was connected to such battery or extreme cruelty. The petitioner consequently has not established a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and his petition must be denied on this additional ground.

### *Eligibility for Immediate Relative Classification*

Beyond the decision of the director, the petitioner has further failed to establish that he was eligible for immediate relative classification based on his relationship with his former wife, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive spouse. As previously discussed, the petitioner has failed to demonstrate both that his former wife subjected him to battery or extreme cruelty and that he had a qualifying relationship with her. Accordingly, he has also failed to demonstrate that he was eligible for immediate relative classification based on such a relationship and the petition must be denied on this second additional ground.

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). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petitioner has not demonstrated the requisite shared residence, good-faith entry into the marriage, battery or extreme cruelty, qualifying relationship and corresponding eligibility for immediate relative classification. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.