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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B5

FILE:

EAC 05 196 52215

Office: VERMONT SERVICE CENTER

Date:

APR 20 2009

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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), as an alien battered or subjected to extreme cruelty by a citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that he had a qualifying relationship with a citizen or lawful permanent resident of the United States; that the petitioner had failed to establish that he is eligible for immigrant classification as an immediate relative of a citizen or lawful permanent resident of the United States; that the petitioner had failed to establish that he shared a joint residence with his wife; that the petitioner had failed to establish that he was subjected to battery or extreme cruelty by his wife; that the petitioner had failed to establish that he is a person of good moral character; and that the petitioner had failed to establish that he married his wife in good faith.

Counsel filed a timely appeal on July 25, 2007.

Section 204(a)(1)(A)(iii) of the Act states, in pertinent part, the following:

- (I) An alien who is described in subclause (II) may file a petition with the [Secretary of Homeland Security] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the [Secretary of Homeland Security] that –
  - (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
  - (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien’s spouse or intended spouse.
- (II) For purposes of subclause (I), an alien described in this subclause is an alien–
  - (aa) (AA) who is the spouse of a citizen of the United States;
  - (BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate

solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and –

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who 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;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

- (ii) *Legal status of the marriage.* The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. . . .
- (iii) *Citizenship or immigration status of the abuser.* The abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved. . . .

\* \* \*

- (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.
- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral

character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

- (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.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .
- (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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

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(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 petitioner is a citizen of Bangladesh who entered the United States in F-1 status on August 25, 1994. He married T-C-,<sup>1</sup> who he claims is a citizen of the United States, on April 28, 2003.

The petitioner filed the instant Form I-360 on June 30, 2005. On July 13, 2005, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner is a person of good moral character; and that he married T-C- in good faith. Counsel responded on September 13, 2005. On November 20, 2006, the director issued another request for additional evidence, and requested additional evidence to establish the citizenship status of T-C-; that he and T-C- shared a joint residence; that he was subjected to battery or extreme cruelty by T-C-; that he is a person of good moral character; and that he entered into marriage with T-C- in good faith. The director also requested clarification as to whether the petitioner and T-C- are still married to one another; proof of the legal termination of the petitioner's previous marriage; and verification that the petitioner was physically present in Bangladesh on April 15, 2000. Counsel submitted two responses: one on January 18, 2007; and one on March 22, 2007. On March 21, 2007, the director issued a notice of intent to deny the petition (NOID), which notified the petitioner of deficiencies in the record and afforded him the opportunity to submit additional evidence to establish that he had a qualifying relationship with T-C-; that he is eligible for immigrant classification as an immediate relative on the basis of such a relationship; that he shared a joint residence with T-C-; that he was subjected to battery or extreme cruelty by T-C-; that he is a person of good moral character; and that he entered into the marriage in good faith. Counsel responded on May 29, 2007. After considering the evidence of record, the director denied the petition on June 22, 2007.

### **Qualifying Relationship and Eligibility for Classification as an Immediate Relative**

The first issue on appeal is whether the petitioner has established that he had a qualifying relationship with T-C- and, as such, whether he is eligible for immigrant classification as an immediate relative on the basis of such a relationship. The director's determination that the petitioner failed to make such a determination rises from two separate issues: (1) whether the petitioner was legally free to enter into the marriage with T-C-; and (2) the immigration status of T-C-. As these two issues are distinct from one another, the AAO will address them separately.

#### *A. Whether the Petitioner was Legally Free to Enter into Marriage with T-C-*

The petitioner indicated on the Form I-360 that his marriage to T-C- was his second marriage and, when he filed the Form I-360, submitted an affidavit executed by the petitioner, in Bangladesh, on April 15, 2000. In this affidavit, the petitioner stated that he had married [REDACTED] on January 14, 1998. The petitioner stated that he had decided to "cut off the matrimonial connection"

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

with [REDACTED] and that, accordingly, from April 15, 2000 onward, he was no longer married to [REDACTED]

In his November 20, 2006 request for additional evidence, the director found this affidavit insufficient to establish that the petitioner was legally free to enter into marriage with T-C- in 2003. The director noted that information from the Department of State (DOS) indicates that marriages in Bangladesh may be dissolved under Muslim law without recourse to legal procedures, and without a record of the divorce being made. However, legal proceedings are usually instituted by one of the parties against the other as a result of the divorce, and in such cases a record of the court action may be available. When divorces are granted by civil courts, as in the case of Christians, copies of the order may be obtained from the court. As the petitioner has claimed to be a Christian, the director, therefore, requested proof of the legal termination of the petitioner's marriage to [REDACTED], and also requested photocopies of the petitioner's passport to establish that he was physically present in Bangladesh on April 15, 2000.

In his March 20, 2007 response, counsel acknowledged that the petitioner was not present in Bangladesh on April 15, 2000. However, counsel asserted that the petitioner's affidavit with regard to his claimed divorce from [REDACTED] "does not suggest that my client signed the document nor that he was in Bangladesh when the document was presented." Counsel also stated that he was "not certain as to whether or not a Faith Christian is permitted or not to utilize the law available to Muslims as to the ending of a marital relationship," and that he is "still in the process of confirming with an attorney in Bangladesh."

In his March 21, 2007 NOID, the director again provided the petitioner with the information from the DOS regarding divorces in Bangladesh, and stated that in order for the legal termination of a marriage to be considered valid for immigration purposes, it must have been registered with a civil authority. In response, counsel submitted a final decree of divorce for the marriage between the petitioner and [REDACTED] dated April 6, 2007.

The director found this evidence insufficient to establish that the petitioner was legally free to enter into marriage with T-C- on April 28, 2003. In his June 22, 2007 denial, the director found that the April 15, 2000 affidavit did in fact indicate that the petitioner had been physically present in Bangladesh at the time the affidavit was issued. With regard to the April 6, 2007 divorce decree, the director noted that this document was issued four years after his marriage to T-C-. Finally, the director found that, as the record indicates that the petitioner is a Christian, under Bangladeshi law he would have been required to obtain a court-issued divorce decree. However, the record lacked a copy of such a decree.

In his August 22, 2007 appellate brief, counsel asserts that, pursuant to *Prentis v. McCormick*, 23 F.2d 802 (6<sup>th</sup> Cir. 1928), the petitioner's marriage to T-C- is presumed valid, even if there is an admission that a divorce had never been obtained with regard to the previous marriage. Accordingly, the director's decision was arbitrary, capricious, an abuse of discretion, and not in accordance with law. Counsel did not address the director's statements regarding the petitioner's presence in Bangladesh on April 15, 2000.

Upon review of the entire record of proceeding, the AAO agrees with the director's determination. The AAO finds no merit in counsel's assertion that a subsequent marriage is presumed valid, even with an admission that a divorce had never been obtained. As a preliminary matter, the AAO notes that *Prentis v. McCormick*, the case cited by counsel in support of his assertion, arose in the Circuit Court of Appeals for the Sixth Circuit. This case, however, arises in Texas, which is located in the Fifth Circuit. That case, therefore, is not binding here.

The evidence of record fails to establish that the petitioner was legally free to enter into the marriage with T-C- at the time of the marriage, as the record indicates that he was still legally married to [REDACTED] at the time of his marriage to T-C- in 2003. The petitioner's April 15, 2000 affidavit fails to establish that his marriage to [REDACTED] was legally dissolved.<sup>2</sup> The DOS information supplied previously indicates that, as a Christian, the petitioner would have had to have been granted a divorce by a civil court in order for the divorce to have any legal effect. No such order, however, was submitted. Nor has any evidence or information been submitted into the record to indicate that the petitioner was not in fact required to go through the civil court system in order to be granted a legal divorce. Nor does the April 6, 2007 divorce decree aid the petitioner, as that order was granted nearly four years after his marriage to T-C-; it does not establish that he was legally divorced from [REDACTED] before the marriage to T-C-.

The petitioner, therefore, has failed to establish that he was legally divorced from [REDACTED] before his marriage to T-C-. This fact is not necessarily disqualifying, however. Rather, the AAO must look to the law of the place of the petitioner's marriage to T-C- in order to determine the validity of the marriage for immigration purposes. *Matter of Arenas*, 15 I & N Dec. 174 (BIA 1975). In *Arenas*, the beneficiary did not terminate her prior marriage in Mexico until after she married U.S. citizen petitioner in Texas. *Id.* at 174. Texas law provided that a marriage is invalid if either party was previously married and not divorced at the time of remarriage, but that the subsequent marriage becomes valid when the prior marriage is dissolved if the parties have since lived together and represented themselves as husband and wife. *Id.* at 175. The BIA held that the marriage would be valid for immigration purposes on the date of the dissolution of the beneficiary's prior marriage, provided the couple presented evidence of their compliance with the other provisions of the Texas law. *Id.*

The AAO notes that the petitioner and T-C- were also married in Texas. Today, section 6.202 of the Texas Family Code states the following:

§ 6.202. Marriage During Existence of Prior Marriage

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<sup>2</sup> There are two problems with this document: (1) it was not signed by the petitioner; and (2) counsel has acknowledged that the petitioner was not in Bangladesh on April 15, 2000 (the document was issued in Bangladesh, and the notary specifically states that the petitioner "solemnly declared and affirmed" the document before him).

- (a) A marriage is void if entered into when either party has an existing marriage to another person that has not been dissolved by legal action or terminated by the death of the other spouse.
- (b) The later marriage that is void under this section becomes valid when the prior marriage is dissolved if, after the date of the dissolution, the parties have lived together as husband and wife and represented themselves to others as being married.<sup>3</sup>

As the petitioner has failed to establish that his marriage to ██████████ had been dissolved at the time he entered into marriage with T-C-, the marriage was considered void by the State of Texas at its inception. V.T.C.A., Family Code, § 6.202(a). Although the petitioner divorced ██████████ in 2007, section 6.202(b) offers no relief, as he and T-C- were not living together as husband and wife after that time. Accordingly, the petitioner's 2007 divorce from ██████████ did not validate his marriage to T-C-. V.T.C.A., Family Code, § 6.202(b).

As the petitioner has failed to demonstrate that his marriage to ██████████ was terminated before his 2003 marriage to T-C-, he has failed to demonstrate that the marriage to T-C- was valid. Although the petitioner obtained a divorce from ██████████ in 2007, because he was no longer living with T-C- at that point, the divorce did not validate the marriage to T-C-. The petitioner, therefore, has failed to establish that that he had a qualifying relationship with a United States citizen or lawful permanent resident. Accordingly, he is not eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Before moving to the next issue, the AAO turns to the petitioner's April 15, 2000 affidavit. As noted previously, this document fails to establish that the petitioner was divorced from ██████████. Again, there are two problems with this document: (1) although it was notarized, it was not signed by the petitioner; and (2) counsel has acknowledged that the petitioner was not in Bangladesh on April 15, 2000. In his appellate brief, counsel refers to this document as a "divorce decree," and states that "it shows that [the petitioner] thought he was divorced from his first wife." This document states that the petitioner appeared before a notary public in Dhaka, Bangladesh on April 15, 2000. The petitioner's "advocate" states that the petitioner signed the document in his presence (in Dhaka). The notary public states that the petitioner, who had been "duly identified" to him by the advocate, had declared and affirmed the contents of the affidavit before him (in Dhaka). As the petitioner did not sign this document, it has no legal value. However, the fact that the petitioner, through counsel, continues to refer to this document, despite the fact that it contains at least three statements indicating that the petitioner was in Bangladesh at the time the document was notarized, raises serious questions regarding the veracity of the petitioner's assertions, and the credibility of his

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<sup>3</sup> The AAO notes that, at the time the BIA issued its decision in *Arenas*, the regulatory language now contained at V.T.C.A., Family Code, § 6.202 was contained at § 2.22. It was relocated to § 6.202 by the Texas Legislature in 1997. See V.T.C.A., Family Code, § 2.22, *Repealed by Acts of 1997, 75<sup>th</sup> Leg., Ch. 7, § 3, eff. April 17, 1997.*

testimony. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

*B. The Immigration Status of T-C-*

The second basis of the director's determination that the petitioner had failed to establish that the petitioner had a qualifying relationship with a United States citizen or lawful permanent resident was his determination that the petitioner had failed to establish that T-C- was either a citizen or lawful permanent resident of the United States. As evidence of the citizenship status of T-C-, the petitioner submitted the birth certificate of an individual named Y-N-.<sup>4</sup> In his November 20, 2006 request for additional evidence, the director requested documentary evidence demonstrating that T-C- and Y-N- are the same person. Counsel's response did not include such information.

The director made the same request in his March 21, 2007 NOID. Counsel and the petitioner elected not to respond to this portion of the director's NOID in the May 29, 2007 submission in response to the NOID.

In his June 22, 2007 denial, the director noted that counsel and the petitioner submitted no evidence in response to this portion of the NOID. Accordingly, the director found that the petitioner had failed to establish that T-C- was either a citizen or lawful permanent resident of the United States.

In his August 22, 2007 appellate brief, counsel asserts that the director's decision that the petitioner had failed to establish that T-C- and Y-N- are the same person was arbitrary, capricious, an abuse of discretion, and not in accordance with law. Counsel asserts that the documents submitted into the record "show that [T-C-] is [Y-N-]." The AAO disagrees.

Counsel states, first, that T-C-'s driver's license and divorce decrees demonstrate that T-C- has changed her name "several times and has adopted a name that is not the same as her birth certificate." The AAO disagrees. The copy of T-C-'s driver's license only demonstrates that she adopted the petitioner's last name. Neither the first name nor the last name of the individual named Y-N- appears on T-C-'s driver's license. Nor do the divorce decrees from T-C-'s first two marriages establish that she and Y-N- are the same person. While the divorce decrees indicate that T-C- adopted the last names of her first two husbands, neither the first name nor the last name of Y-N- appear in either divorce decree. They provide no evidence that she and Y-N- are the same person.

Second, counsel states that the dates of birth on T-C-'s driver's license and Y-N-'s birth certificate are the same. The AAO agrees: T-C-'s driver's license states that she was born on January 13, 1956, and Y-N-'s birth certificate states that she was also born on January 13, 1956. However, the fact that T-C- and Y-N- were both born on January 13, 1956 does not establish that they are the same person. The

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<sup>4</sup> Full name withheld.

AAO presumes that hundreds, if not thousands, of people were born in the State of Texas on January 13, 1956.

Third, counsel states that [t]his is conclusively proved by the fact that she attached this birth certificate to the petition she filed for the benefit of [the petitioner] which was filed with [USCIS] on May 30, 2003.” The AAO disagrees. If the birth certificate of Y-N- was submitted as the proof of T-C-’s immigration status in the I-130 petition, and no evidence was submitted to demonstrate that T-C- and Y-N- are the same person, then the Form I-130 should not have been approved.

The record, as it currently stands, contains no evidence establishing that T-C- and Y-N- are the same person. As there is no other evidence of record regarding the immigration status of T-C-, there is no evidence in the record to demonstrate that T-C- is either a citizen or a lawful permanent resident of the United States. The petitioner, therefore, has failed to establish that that he had a qualifying relationship with a United States citizen or lawful permanent resident. Accordingly, he is not eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

### **Joint Residence**

The second issue on appeal is whether the petitioner has established that he and T-C- shared a joint residence. On the Form I-360, the petitioner stated that he and T-C- shared a joint residence from October 2002 until March 2004. However, in his May 10, 2005 letter of support, counsel stated that T-C- moved out of the couple’s shared joint residence in July 2004. Finally, in his May 10, 2005 affidavit, the petitioner stated that T-C- moved out of their shared joint residence in August 2004. The director noted these inconsistencies in his November 20, 2006 request for additional evidence, and requested a sworn statement of explanation for these discrepancies.

In response, the petitioner submitted a March 20, 2007 affidavit stating that “[i]t seems that the assistant in my legal representative’s office made a mental error that I did not catch before signing and submitting.” Counsel also submitted a March 20, 2007 affidavit in which he stated that “[i]t seems that my assistant in my office seem [sic] to have made a typographical error that I did not catch in my review before advising [the petitioner] to sign and submit. [The petitioner] has never told me any other date of separation other than late August 2004.”

The AAO finds the March 20, 2007 affidavits of counsel and the petitioner insufficient to establish that the petitioner and T-C- shared a joint residence. First, the AAO notes that while the statements of counsel and the petitioner asserting that a legal assistant made a typographical error before submitted the form for the petitioner to sign explains the discrepancy on the Form I-360, it does not explain the third discrepancy, which was contained in counsel’s letter of support. Counsel’s explanation does not explain the discrepancy contained in his letter of support for two reasons: (1) since the petitioner did not sign counsel’s letter of support, the assertion that counsel did not catch the typographical error before submitting the form to the petitioner to sign would not apply; and (2) since counsel’s letter of support introduced a third month during which T-C- allegedly moved out of the apartment (July 2004), the explanation that the legal assistant mistakenly named March 2004 on

the Form I-360 as the month during which the joint residence ended does not clarify why he named July 2004.

Moreover, the AAO notes further inconsistencies with regard to the dates of claimed joint residence. As noted previously, the petitioner stated on the Form I-360 that he and the petitioner began living together in October 2002. However, in her February 27, 2007 letter, [REDACTED] the property manager at the apartment complex at which the petitioner and T-C- allegedly shared a joint residence, states that the petitioner and T-C- lived together from 2003 until 2004.<sup>5</sup> In her February 3, 2007 letter, which was introduced into the record by the petitioner, T-C- stated that she and the petitioner began living together after their April 28, 2003 wedding. In his May 10, 2005 affidavit, [REDACTED] stated that he was the petitioner's roommate until the petitioner and T-C- married; he left the apartment after T-C- moved in. Also, the AAO notes that the petitioner stated on the Form I-360 that the last address at which he and T-C- lived together was [REDACTED] in Dallas, Texas. However, the evidence of record indicates that the petitioner and T-C- were still living at [REDACTED] in Dallas, Texas at the time T-C- moved out of the apartment.<sup>6</sup> The evidence of record does not clarify these inconsistencies, and they further undermine the evidentiary weight of the petitioner's testimony. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

The letter from [REDACTED] does not establish that the petitioner and T-C- shared a residence at Forest Estates, as the dates she provides in her letter conflict with those provided by the petitioner on the Form I-360, as noted in the previous paragraph. Nor does the account ledger listing the dates on which the petitioner paid rent to [REDACTED] establish joint residency, as his name alone is listed on the ledger.

As noted by the director, many of the utility bills submitted by the petitioner are dated after the dates that the petitioner states T-C- moved out of the apartment, so they are not evidence of a shared joint residence during the claimed period of such joint residence. Although the petitioner submits

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<sup>5</sup> The petitioner had lived in this apartment since January 31, 2002, so the petitioner and T-C- would not have lived together at a different location prior to this date.

<sup>6</sup> As the account ledger from the [REDACTED] apartment complex indicates that the petitioner moved out of the apartment on September 3, 2004, and the lease for the [REDACTED] address indicates that the petitioner and T-C- would not have been able to take possession of the [REDACTED] address until September 1, 2004, it does not appear that T-C- would have ever lived at the [REDACTED] address under any of the three dates provided for the end of the couple's joint residency at the time the petition was filed (March 2004, July 2004, and August 2004).

evidence of a shared bank account opened in February 2004, the AAO notes that it is a “payable on death” account,<sup>7</sup> which means that T-C- would have had no access to it. Although the petitioner submits a copy of a canceled check, the AAO notes that T-C-’s name is not listed on the check.

The remaining documents of record that do indicate a joint shared residence are too few in number to establish the petitioner’s claim. Moreover, the AAO incorporates its earlier discussion of the inconsistencies and discrepancies of record, which severely undermines the credibility of his testimony. The petitioner had failed to establish that he shared a joint residence with T-C-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### **Battery and/or Extreme Cruelty**

The third issue on appeal is whether the petitioner has established that he was subjected to battery or extreme cruelty by T-C-. As a preliminary matter, the AAO incorporates here its previous discussion of the numerous unresolved inconsistencies and discrepancies of record, which undermine the credibility of the petitioner’s testimony. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

In support of his assertion that he was subjected to battery or extreme cruelty by T-C-, the petitioner submits the results of a polygraph test, two self-affidavits, a letter from T-C-, affidavits from friends, and a psychological evaluation.

The polygraph test results are not evidence that the petitioner was subjected to battery or extreme cruelty. In federal court proceedings, evidence of the results of a polygraph test is inadmissible and may not be “introduced into evidence to establish the truth of the statements made during the examination.” *United States v. Bowen*, 857 F.2d 1337, 1341 (9th Cir. 1988); *see also United States v. Frogge*, 476 F.2d 969 (5th Cir. 1973), *cert. denied*, 414 U.S. 849 (1974). In immigration proceedings, however, documentary evidence need not comport with the strict judicial rules of evidence. Instead, as in deportation proceedings, “such evidence need only be probative and its use fundamentally fair, so as not to deprive an alien of due process of law.” *Matter of Velasquez*, 19 I&N Dec. 377 (BIA 1986); *see also Matter of D*, 20 I&N Dec. 827, 831 (BIA 1994).

In the present case, the polygraph results are not found to be probative, as the report contains information that conflicts with the other evidence of record. According to the polygraph report, the petitioner “continued to allege the information describing his relationship with [T-C-] contained in his sworn statement dated June 28, 2003, is true and correct.” However, the petitioner stated in his

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<sup>7</sup> This type of account is also known as a “[REDACTED]”

March 20, 2007 affidavit that the abuse began in August 2003. If the abuse did not begin until August 2003, then it is unclear to the AAO how the petitioner could have submitted a sworn statement to the individual conducting the polygraph test on June 28, 2003. This polygraph report, therefore, introduces yet another inconsistency into the record, which further undermines the credibility of the petitioner's testimony. *See Matter of Ho* at 591-92.

Furthermore, the value of the polygraph is questionable for the same reasons that have led the federal courts to find them inadmissible. As previously mentioned, the results of a polygraph test may not be used to establish the veracity of the assertion tested. In establishing this rule, the courts have determined that "the polygraph has not yet been accepted . . . as a scientifically reliable method of ascertaining truth or deception." *United States v. Gloria*, 494 F.2d 477 (5th Cir. 1974). Finally, it is noted that the petitioner has not revealed the methodologies of the polygraph testing but rather submitted a cursory summary of the results, and has not established the credentials of the polygraph examiner or the standards used.

Having discounted the polygraph test results, the AAO turns next to the testimony of the petitioner, which consists of two affidavits, and the testimony of T-C-, which consists of a letter. Counsel asserts on appeal that these documents establish that T-C- subjected the petitioner to battery and/or extreme cruelty. In his May 10, 2005 affidavit, the petitioner stated that he met T-C- in September 2002, and they married on April 28, 2003. The petitioner testified that as time went on, T-C- became increasingly dependent on drugs, and "became an abusive wife mentally, financially, physically, emotionally[,] and more." The petitioner described how the petitioner yelled at him; used his money to buy drugs; made him buy her a car; called him names; and constantly threatened his immigration status. The petitioner testified that on one afternoon in August 2004, he came home from work, and T-C- told him that she had met a man named [REDACTED], and that she wanted to marry him. Later that month, he came home from work one evening to find that T-C- had moved her things out of the apartment. She had also taken the electronics, as well as the \$4,000 in cash that the petitioner had kept hidden away for emergencies. The petitioner stated that T-C- left him a note asking him not to look for her.

In his March 20, 2007 affidavit, the petitioner stated that T-C- called him names constantly; persecuted him; threw things at him (such as the remote control); threatened him with physical force; grabbed him by the back of the neck and left arm, threw him out of the bedroom, and locked him out of the bedroom for the night; complained about not having enough money; and that she insulted the petitioner in front of his friends. The petitioner stated that he lived in fear; that he could not sleep at night; that his friends stopped visiting him; that his health deteriorated; and that his job performance suffered.

In her February 3, 2007 letter, T-C- stated that she and the petitioner met in August 2002. T-C- stated that the petitioner did not know about her drug addiction at the time of the marriage. She testified that she manipulated the petitioner for money and the things she wanted; that she instigated fights so that she could leave the house to use drugs; that she is ashamed of her actions; and that she wishes the best for the petitioner's future.

The statements of the petitioner and T-C- fail to establish that T-C- subjected the petitioner to battery or extreme cruelty. First, as noted previously, the evidence of record is inconsistent as to when the alleged abuse began. Although the petitioner stated in his affidavit that the alleged abuse began in August 2003, the polygraph test result references a June 2003 letter from the petitioner discussing the abuse. Again, if the abuse began in August 2003, it is unclear how the petitioner could have written a letter discussing that abuse in June 2003. Further, the AAO notes an inconsistency between the testimony of T-C- and the petitioner: the petitioner states that the couple met in August 2002, but T-C- states that they met in September 2002. Again, these unexplained inconsistencies detract from the credibility of the petitioner's testimony. *See Matter of Ho* at 591-92. The testimony of the petitioner and T-C- fails to establish that the petitioner was subjected to battery or extreme cruelty by T-C-.

Moreover, the AAO notes several unusual usages of grammar by the petitioner in his May 10, 2005 affidavit. The AAO notes that the petitioner made the following statements at page 5 of his affidavit:

- "I knew [T-C-] was very responsible with care, love[,] and respect when she offered to file a for a green card on *his* behalf [emphasis added]."
- "I got a good job as soon as I got *his* work permit [emphasis added]."
- "*They* are still married and she just wants to hurt *him* more [emphasis added]."
- "I have kept *his* promises to her [emphasis added]."

These statements by the petitioner lead the AAO to question whether the petitioner actually wrote this affidavit, or whether it was actually prepared by someone else for the petitioner to sign.

Nor do the six affidavits from the petitioner's friends establish that he was subjected to battery or extreme cruelty. In his April 28, 2005 affidavit, ██████████ states that, in February 2005, an acquaintance saw the petitioner at a grocery store, and that the petitioner avoided him for no reason, and looked very distressed. As such, ██████████ and some friends went to the petitioner's apartment to see him. ██████████ stated that although the petitioner seemed worried and hesitant, they "urged him to discuss his situation." ██████████ stated that the petitioner told them he could not allow them inside, as T-C- had told him not to welcome them any longer. The petitioner also told them that T-C- had told him not to call them anymore, or perform any volunteer activities, or she would call immigration authorities and have him deported.

██████████ testimony is inconsistent with other evidence of record. As noted previously, the petitioner testified in his May 10, 2005 that T-C- told him in August 2004 that she wanted to marry ██████████ and had moved out of the apartment later that month. In a handwritten letter dated November 15, 2004, T-C- told the petitioner that she and ██████████ would be returning to Dallas together in mid-January 2005. Accordingly, the record does not support ██████████'s implication that, in February 2005, T-C- was telling the petitioner who could, and could not, come into the apartment. Moreover, the AAO notes that the petitioner moved into a new apartment in September 2004, and

the record does not indicate that T-C- ever lived in that apartment. As such, by February 2005 the petitioner would have been living in an apartment in which T-C- had never lived, which further undermines [REDACTED]'s assertion that T-C- was telling the petitioner who could, and could not, come into the apartment as of February 2005. These inconsistencies undermine the evidentiary weight of [REDACTED]'s testimony. *See Matter of Ho* at 591-92.

[REDACTED] testified about the changes he saw in the petitioner, and that the petitioner was abused, but he does not indicate whether he actually witnessed any of the alleged abuse.

[REDACTED] testified about two incidents of alleged abuse. One occurred in or around the end of the May 2003, and the other occurred in July 2003. However, both of the incidents occurred prior to August 2003, the month during which the petitioner claimed the alleged abuse began. This inconsistency undermines the evidentiary weight of [REDACTED] testimony. *See Matter of Ho* at 591-92.

[REDACTED] testified about a situation that occurred when he stayed at the couple's apartment for a "couple of days" in July 2004. However, the petitioner testified in his March 20, 2007 affidavit that T-C- had told him in September 2003 not to bring any more "terrorist people" into their apartment and that after that incident, the petitioner no longer invited friends to the apartment. He testified that although friends would sometimes come by to visit, he had to "rush them off" so that he would not be punished. [REDACTED]'s testimony regarding a multi-day visit to the petitioner's apartment does not comport with the petitioner's testimony about visits from friends being forbidden. This inconsistency undermines the evidentiary weight of [REDACTED] testimony. *See Matter of Ho* at 591-92.

[REDACTED] testifies that the petitioner has had personal problems related to his marriage; that the petitioner appears emotionally drained; and that the petitioner appears to be exhausted. However, his testimony does not establish that such emotional drainage and exhaustion were caused by the actions of T-C-.

Although [REDACTED] describes an incident that occurred during the time period during which the petitioner claims the alleged abuse occurred, given that the testimony of the petitioner, T-C-, and the petitioner's other friends has been discounted, the testimony of [REDACTED], alone, is insufficient to establish the petitioner's claim.

Finally, the AAO turns to the psychological evaluation from [REDACTED], dated June 27, 2005. [REDACTED] states her opinion that the petitioner fulfills the diagnostic criteria for major depressive disorder, generalized anxiety disorder, and undifferentiated somatoform disorder. She also states her opinion that these disorders were the direct result of T-C-'s maltreatment of the petitioner. However, this evaluation from [REDACTED] does not establish that the petitioner was subjected to battery or extreme cruelty. First, the AAO notes that [REDACTED] states that T-C- has refused to have any contact with the petitioner since August 2004, which introduces yet another inconsistency into the record, as the record contains a handwritten letter from T-C- to the petitioner

dated November 15, 2004, which undermines the credibility of the petitioner's testimony even further. While the AAO does not question the expertise of [REDACTED], it does question the credibility of the petitioner's testimony, which forms the basis upon which her opinions are based. Further, the AAO finds no evidence of any treatment for the major depressive disorder, generalized anxiety disorder, and undifferentiated somatoform disorder diagnosed by [REDACTED]. Finally, the AAO questions the qualifications of [REDACTED] to opine that the petitioner has developed hypertension, ophthalmic hypertension, and diabetes as a result of T-C-'s maltreatment. Although counsel stated in his March 20, 2007 letter that this evaluation was "[p]roof from the medical doctor that this condition was caused by this relation," the AAO notes that [REDACTED] does not claim to be a medical doctor; she claims to be a psychologist. She indicates that her doctoral degree is in psychology, and not in medicine, as suggested by counsel. This evaluation fails to establish that the petitioner was subjected to battery or extreme cruelty by T-C-.

For all of these reasons, the AAO agrees with the director's determination that the petitioner has failed to establish that T-C- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### **Good Moral Character**

The fourth issue on appeal is whether the petitioner has established that he is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in June 2002 and ending in June 2005).

Although the petitioner has submitted the requisite police clearances, the director still found that the petitioner had failed to demonstrate that he is a person of good moral character. In his June 22, 2007 denial, the director found that the petitioner had failed to make such a demonstration for two reasons, that (1) the record indicated that the petitioner had entered into a bigamous marriage; and (2) the petitioner's submission of the April 15, 2000 affidavit discussed previously indicated that the petitioner had provided false information to USCIS for the purpose of obtaining immigration benefits.

The AAO agrees. As was noted in the AAO's earlier discussion of the petitioner's failure to establish that his first marriage was legally terminated prior to his marriage to T-C-, the record establishes that the petitioner entered into a bigamous marriage and, pursuant to V.T.C.A., Family Code, § 6.202(b), the petitioner's 2007 divorce from his first wife did not validate his marriage to T-C- under Texas law. Accordingly, it appears as though the petitioner committed bigamy when he entered into marriage with T-C- in 2003. Pursuant to V.T.C.A., Penal Code, § 25.01(e)(1), bigamy in the State of Texas is a second-degree felony. The record fails to indicate why the petitioner is not subject to this law.

The AAO also incorporates here its previous discussion with regard to the petitioner's submission of the April 15, 2000 affidavit. As was noted by the AAO at that time, the fact that the petitioner, through counsel, continues to refer to this document, despite the fact that it contains at least three statements indicating that the petitioner was in Bangladesh at the time the document was notarized, raises serious questions regarding the veracity of the petitioner's assertions, and the credibility of his testimony. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

As noted previously, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part, that "[a] self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act." Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, the following:

(f) For the purposes of this chapter--

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

\* \* \*

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter. . . .

\* \* \*

The fact that any person is not within any of the forgoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

*A. The Statute Does Not Prescribe a Time Period During Which Good Moral Character Must be Shown*

The statute at issue in this case does not state a time period during which the self-petitioner must demonstrate his or her good moral character. See Section 204(a)(1)(A)(iii)(II)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a self-petitioner's good moral character includes local police clearances or state-issued criminal background checks from each place where the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. However, the regulation's designation of the three-year period preceding the filing of the petition does not limit the temporal scope of USCIS' inquiry into the petitioner's good moral character. The agency may investigate the self-petitioner's character beyond the three-year period when there is reason to

believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996).

*B. Discretionary Bars*

The AAO finds the petitioner to lack good moral character pursuant to section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act indicates that even if the petitioner is not in any of the classes listed, the AAO is not precluded from finding the petitioner lacks good moral character. Similarly, section 204.2(c)(1)(vii) states, in pertinent part:

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character.

In this case, the record reflects that the petitioner committed bigamy, a second-degree felony in the State of Texas, when he entered into the marriage with the petitioner. The AAO also again incorporates its previous discussion with regard to the petitioner's submission of the April 15, 2000 affidavit, which raises serious questions with regard to the veracity of his testimony. As a result of these two concerns, the AAO finds that, as a matter of discretion exercised under section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii), the petitioner has not established that he is a person of good moral character. The petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

**Good Faith Entry into Marriage**

The fifth issue on appeal is whether the petitioner has established that he married T-C- in good faith. The AAO agrees with the director's determination. First, the AAO incorporates here its previous discussion with regard to the issue of joint residency. The AAO also notes again the inconsistency between the testimony of the petitioner and T-C- with regard to their initial introductions. Beyond those issues, the AAO notes that the petitioner has failed to describe the couple's courtship, decision to marry, and engagement in any detail. He has failed to describe whether any cultural differences arose during the courtship, and how those differences were resolved. He has failed to describe, in detail, the types of activities the couple enjoyed during their courtship. Without such information, the AAO is unable to examine his intentions upon entering into the marriage. The petitioner has failed to establish that he entered into marriage with T-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

**Conclusion**

The AAO agrees with the director's determination that the petitioner has failed to establish that he had a qualifying relationship with a citizen or lawful permanent resident of the United States; that he had failed to establish that he is eligible for immigrant classification as an immediate relative of a citizen or lawful permanent resident of the United States; that he had failed to establish that he

shared a joint residence with his wife; that he had failed to establish that he was subjected to battery or extreme cruelty by his wife; that he had failed to establish that he is a person of good moral character; and that he had failed to establish that he married his wife in good faith. Accordingly, the AAO agrees with the director's decision to deny the petition. He is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be 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 is dismissed.