

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

(b)(6)



**U.S. Citizenship
and Immigration
Services**

Date: **JAN 09 2013**

Office: VERMONT SERVICE CENTER

File: [REDACTED]

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), denied the immigrant visa petition and affirmed his decision upon granting the petitioner’s motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to 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 his former United States citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his former wife, a U.S. citizen, in good faith and for failure to establish that the petitioner was subjected to battery or extreme cruelty by her during their marriage.

On appeal, the petitioner, through counsel, submits a brief.

Relevant 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, 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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act 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).

Section 204(a)(1)(J) of the Act further 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:

(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:

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *Abuse*. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Pertinent Facts and Procedural History

The petitioner is a citizen of Israel who entered the United States on January 27, 2004 as a B-1 visitor. The petitioner married [REDACTED], a U.S. citizen, [REDACTED] on December 2, 2004. The two were divorced on April 29, 2009. The petitioner filed the instant Form I-360 on November 19, 2010. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of evidence of the requisite battery or extreme cruelty by [REDACTED] against him and of his good-faith entry into marriage with [REDACTED]. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

On appeal, counsel asserts that the director failed to consider all the credible and relevant evidence submitted and failed to explain why the evidence submitted was insufficient.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons. Beyond the director's decision, the petitioner has also not established that he is eligible for immediate relative classification based upon a qualifying relationship with a U.S. citizen.²

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former wife did not subject him to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the following: the petitioner's affidavits; psychological evaluation reports from [REDACTED] Ph.D.; a psychological evaluation report from [REDACTED] Ph.D.; letters from [REDACTED] Dermatology Physician Assistant; and affidavits from friends [REDACTED]

In his first affidavit, the petitioner stated that he met [REDACTED] in June of 2004 through a mutual friend. He stated that they were immediately attracted to each other and moved in together within a month of meeting. He then stated that in late 2004 he asked [REDACTED] to marry him. The petitioner stated that at first things were great but then he felt a great pressure to earn more money. As a result, he began working longer hours and the two spent a lot of time apart. The petitioner stated that during this time, [REDACTED] began drinking and partying excessively, and that she also began to belittle him both privately and in front of his friends. The petitioner stated that in 2006, he returned from a business trip and found [REDACTED] in bed with another woman. He stated that he felt humiliated and did not know how to handle the situation. The petitioner stated that [REDACTED] traveled to New York City frequently and wanted to move

¹ Name withheld to protect the individual's identity.

² 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).

there. During a trip to New York, the petitioner considered relocating but decided against it. [REDACTED] would not return to [REDACTED] with him so the petitioner returned to [REDACTED] alone and filed for divorce. The petitioner stated that as a result of the stress from his marriage, he developed severe psoriasis and stomach ailments. The petitioner did not provide further probative details of specific incidents of abuse. In the petitioner's second affidavit, he stated that [REDACTED] subjected him to constant belittlement and abandonment. He stated that she broke things when she was angry and was frequently unfaithful. He recounted that she would flirt with other men in front of him and constantly embarrass and manipulate him. He stated that as a result of her treatment, he continues to suffer from an "inability to forge a meaningful, loving relationship with another person." The petitioner did not cite to specific examples or incidents of abuse or provide any probative details about [REDACTED] treatment of him. The petitioner's statements do not demonstrate that his former wife ever battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The director correctly determined that the remaining relevant evidence in the record did not establish that the petitioner was subjected to extreme cruelty by [REDACTED]. The first letter from [REDACTED] stated that the petitioner was being treated for psoriasis which may be caused by stress. The second letter stated that the petitioner was being medicated for his psoriasis. The letters do not mention the petitioner's former wife or any domestic violence as a causative factor of his physical health condition. The psychological evaluations from [REDACTED] do not provide any additional information regarding the claimed abuse. [REDACTED] indicated that the test data and clinical interviews from the petitioner's sessions revealed that the petitioner experienced symptoms consistent with that of an individual who has experienced domestic abuse. However, the evaluation does not provide any probative details regarding any abuse or extreme cruelty inflicted by [REDACTED] upon the petitioner. While we do not question [REDACTED] professional expertise, her assessment conveys the petitioner's statements during her interviews with him, and provides no further, substantive information regarding the claimed abuse. The petitioner also submitted another psychological evaluation from a second psychologist, [REDACTED] concluded that the petitioner was emotionally abused during his marriage to [REDACTED] but he did not state the basis for this determination. Likewise, this evaluation does not provide further, substantive information demonstrating that the actions of [REDACTED] constituted extreme cruelty.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include ... [o]ther forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). The petitioner submitted below, affidavits from three friends, [REDACTED], [REDACTED] stated that he is a friend of the petitioner but that he once slept with [REDACTED] while the petitioner was away. He did not provide information regarding any abuse. [REDACTED] stated that he worked with the petitioner and witnessed the petitioner become depressed over [REDACTED]'s treatment of him. However, [REDACTED] does not describe whether he witnessed specific incidents of abuse or otherwise establish his knowledge of such abuse. [REDACTED] stated that he is a close friend of the petitioner and that the petitioner confided in him. [REDACTED] stated that the petitioner was frequently upset about what [REDACTED] "would put him through," but he "wouldn't know exactly why."

On appeal, counsel asserts that the relevant evidence submitted demonstrates that it is more likely than not that [REDACTED] subjected the petitioner to extreme cruelty but she fails to articulate how the relevant evidence demonstrates that any specific behaviors of the petitioner's former wife constituted battery or extreme cruelty. The petitioner's affidavits and the affidavits from his friends do not contain sufficient, probative information to establish this claimed abuse. When viewed in the aggregate, the remaining, relevant evidence in the record is insufficient to establish that [REDACTED] battered the petitioner or that her behavior constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his 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.

Entry into the Marriage in Good Faith

The director also correctly determined that the petitioner failed to establish that he married A-N- in good faith. The record contains the petitioner's affidavits, a copy of a blank check, photographs of their wedding day and of several other occasions, and affidavits from three friends. In his first affidavit, the petitioner stated that he met [REDACTED] was instantly attracted to her, and moved in with her soon after they met. He stated that they got married and that at first things were great until he started working longer hours. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. In his second affidavit, the petitioner stated that he submitted all the proof that he had regarding his relationship with [REDACTED]. He spoke predominantly of the claimed abuse and did not further describe his courtship with [REDACTED], wedding ceremony, shared residence or other experiences. The affidavits of the petitioner's friends submitted below also did not contain probative information regarding the petitioner's intentions in marrying [REDACTED]. The petitioner's friends all attested to knowing the petitioner and his former wife as a married couple, but they did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship. The photographs and the blank check alone are insufficient to establish the petitioner's good-faith intent.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." *See* 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's statements do not provide sufficient detail to adequately address his good-faith intent upon marrying [REDACTED]. Although he very briefly described how they met, the petitioner's testimony is insufficient to establish his intentions upon marrying [REDACTED]. Likewise the testimony submitted by his friends failed to provide probative information regarding his good-faith intent. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that [REDACTED] subjected him to battery or extreme cruelty during their marriage and that he entered the marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.