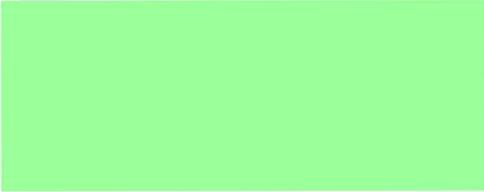




U.S. Citizenship
and Immigration
Services

(b)(6)



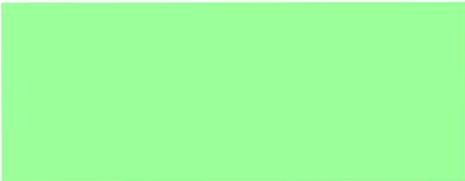
DATE: **MAR 12 2013** Office: VERMONT SERVICE CENTER

File:

IN RE: Petitioner:

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 with the field office or service center that originally decided your case by filing a 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, denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal and affirmed its decision upon granting a motion to reopen and reconsider. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted. The AAO's previous decisions will be affirmed and the petition will remain denied.

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 a United States citizen.

Applicable Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are set forth in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

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

* * *

(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.

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 decision to dismiss the appeal will be affirmed for the following reasons.

Facts and Procedural History

The petitioner is a citizen of Sierra Leone who entered the United States on or about April 23, 1986 as a visitor to the United States. He married S-R,¹ the claimed abusive United States citizen on October 28, 2004. On November 12, 2008, he filed the instant Form I-360. Upon review of the record, including the petitioner's response to a Request for Evidence (RFE), the director denied the petition determining the petitioner had failed to establish that he had been subjected to battery and/or extreme cruelty by S-R-, he had married S-R- in good faith, and he had complied with the provisions of section 204(c) of the Act.

The AAO dismissed the appeal, concurring with the director's decision that the petitioner had not established that he had been subjected to battery and/or extreme cruelty and that he had failed to comply with the provisions of section 204(c) of the Act. The AAO further determined beyond the decision of the director that because the petitioner had not complied with section 204(c) of the Act, he is ineligible for immediate relative classification based upon his marriage to S-R-. The AAO

¹ Name withheld to protect the individual's identity.

found that the petitioner had overcome the director's determination that the petitioner had not established that he married S-R- in good faith and withdrew the director's decision on that issue. The AAO affirmed its decision upon granting a subsequent motion to reopen and reconsider

The matter is now before the AAO on a second motion to reopen and reconsider. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the additional information submitted with the motion fail to establish the petitioner's eligibility. The decision to dismiss the appeal will be affirmed for the following reasons.

Battery or Extreme Cruelty

In its July 25, 2011 decision on appeal and May 11, 2012 decision on the prior motion, the AAO discussed the deficiencies of the statements submitted by the petitioner as well as the statements of those who submitted statements on his behalf regarding the petitioner's claims of battery or extreme cruelty. As the AAO previously provided a synopsis of the statements, the statements will not be repeated here.

On the present motion, counsel for the petitioner reasserts that the AAO imposed a higher burden on the petitioner than called for in the regulations and failed to deliver a reasonable explanation as to why the petitioner's claims of abuse failed to meet the evidentiary standard. As we stated in our previous decision, section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i).

Counsel asserts that the AAO failed to discuss a police report reflecting that the petitioner was threatened by S-R-'s father. However, the police report does not indicate that S-R- threatened the petitioner or requested her father to threaten him. The narrative of the police report states that on September 20, 2008, S-R- and her father came to the petitioner's residence for a custody exchange of the petitioner's daughter. The report states that during the custody exchange, S-R-'s father told him that "if he has any problems to come take it out with him." The report indicates that the petitioner did not feel threatened by the comment, but wanted it documented. Although the report shows that S-R- was present during the custody exchange, the report does not indicate that she was involved in the discussion between the petitioner and her father. Therefore, the police report does not demonstrate that S-R- was engaged in behavior that 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).

Counsel further asserts that the AAO failed to address a letter from the State of New Jersey Department of Children and Families and a dismissal of a petition for a protective order. Counsel contends that these documents "verify[] that on at least two occasions, petitioner's ex-wife made false allegations against him to harass and intimidate him." Counsel fails to articulate,

however, how the evidence demonstrates that the behaviors of the petitioner's wife constituted extreme cruelty. Although the letter from the New Jersey Department of Children and Families states that an allegation of child abuse against the petitioner was unfounded, the letter does not state that S-R- made false allegations against the petitioner. As previously discussed, the August 15, 2008 child custody order signed by both S-R- and the petitioner notes that the calls S-R- made to child services and to the police were for the purpose of a well check. The record does not demonstrate that the petitioner's ongoing custody dispute with S-R- regarding their daughter involved S-R-'s extreme cruelty. Similarly, the court order shows that S-R-'s petition for a protective order was dismissed, but it does not indicate that her petition was frivolous or that it was filed in an effort to harass and intimidate the petitioner. Consequently, these documents do not reflect that S-R- was engaged in behavior that involved extreme cruelty as that term is defined in the regulations.

Counsel contends that S-R-'s behavior constituted extreme cruelty through threats, harassment, intimidation and humiliation of the petitioner. Counsel submits an affidavit from the petitioner, dated June 6, 2012, in which the petitioner reiterates that S-R- has used the legal system to "harass and burden" him with false accusations that have harmed him financially and separated him from his daughter. He also reiterates that S-R- subjected him to verbal abuse and sexual degradation. The record on the present motion is insufficient to overcome the AAO's prior decisions on this issue. The petitioner in the previous motion clarified that he does not seek to establish that he was subjected to battery perpetrated by S-R-; but rather seeks to establish that he was subjected to extreme cruelty. As previously discussed, the petitioner has not provided probative testimony that S-R-'s non-physical behavior was, for example, accompanied by coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over him. The petitioner has not established that he was subjected to economic coercion, psychological attacks, degradation and humiliation, or other behavior that is comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has he claimed or demonstrated that S-R- was abusive towards their daughter. Accordingly, the petitioner has not established that S-R- subjected him or his child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Section 204(c) of the Act and the Petitioner's Marriage to R-J-²

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws[.]

² Name withheld to protect the individual's identity.

- (2) the [Secretary of Homeland Security] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

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

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

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

In its previous decisions, the AAO determined that upon an independent review of the totality of the evidence, the record shows that the petitioner entered into the marriage with his first wife, R-J-, for the purpose of evading the immigration laws. The petitioner married R-J-, a citizen of the United States, on March 20, 1989. R-J- obtained a divorce based on the ground of extreme cruelty on May 20, 1991. The record includes, however, a Form I-751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status, filed on July 1, 1991, six weeks after the divorce. The petitioner, on February 7, 1992, filed a Form I-752, Application of Waiver to File Joint Petition for Removal of Conditions. The petitioner and R-J- both appeared for an immigration interview on December 16, 1992. During the course of the interview, the immigration officer questioned R-J-'s signature on the Form I-751 and a residential lease and requested that the Chief Forensic Document Analyst at the Forensic Document Laboratory (FDL) of the legacy Immigration and Naturalization Service (INS) analyze the signatures in comparison with R-J-'s signature taken at the December 16, 1992 interview. FDL made a specific finding that the two signatures in question had not been made by the same person who had executed the "live" December 16, 1992 signature. On August 9, 1994, legacy INS denied the petitioner's Form I-752, determining the petitioner had failed to establish that he had married R-J- for any reason other than to procure entry into the United States and obtain permanent residence. On September 2, 1994, the petitioner and R-J- remarried and R-J- divorced the petitioner a second time on July 3, 1996, again on the grounds of cruelty.

On the previous motion, the AAO concluded that the record showed that the petitioner entered into the marriage with R-J- for the purpose of evading the immigration laws. The AAO stated that the record contained no probative testimony from the petitioner regarding his introduction to and

subsequent interactions with R-J- prior to the marriage. The AAO found that the statements the petitioner submitted from Dr. [REDACTED] and [REDACTED] did not describe in probative detail their personal observations of the couple prior to or after marriage. The AAO stated that although R-J-'s parents declared their belief that their daughter's marriage was legitimate, they provided no testimony of their observations of the couple's interactions and no testimony to assist in establishing the petitioner's intent when entering into the marriage. The AAO also found that the testimony of R-J- was inconsistent and thus unreliable. The AAO noted that although the petitioner offered his explanation that R-J- reported different things to the police and to legacy INS at different times regarding the marriage in order to hurt or manipulate him, his explanation is insufficient to resolve R-J-'s inconsistent characterizations of the relationship. The AAO determined that the documentary evidence submitted, which is dated just prior to the immigration interviews or in response to the questioning of the legitimacy of the marriage, likewise, did not establish the petitioner's intent when entering into the marriage. The AAO also found that photographs depicting the couple together on one or more occasions and the receipts for the engagement ring for the first marriage were not probative in establishing the petitioner's intent when entering into the marriage.

On the previous motion, counsel submitted an August 25, 2011 report prepared by [REDACTED] Forensic Document Examiner, who reviewed the specimen signatures of R-J- and the questioned signatures of R-J- on the machine copies of the Form I-751 and the residential lease. He concluded that as a meaningful comparison of the signatures was not possible, it also was not possible to determine whether R-J- or the petitioner did or did not write the questioned signatures. Mr. [REDACTED] further noted counsel's report that the questioned signatures were made on a concrete surface in a park and opined: "the findings of the Forensic Documents Lab dated December 28, 1992 that the signatures 'were not made by [R-J-] the writer of the known [R-J-] signatures' is not a valid conclusion as it cannot be substantiated by an examination of the [documents examined]." The AAO found that Mr. [REDACTED]'s acknowledgment of the unnatural nature of the signatures on the Form I-751 and the residential lease and the FDL's conclusion is sufficient to determine that the Form I-751 and the residential lease were not signed by R-J-. The AAO determined that the petitioner's submission of documents to legacy INS that did not include R-J-'s actual signature undermined the credibility of his already limited testimony regarding his intent when entering into the marriage.

On the present motion, counsel asserts that the overall weight of the objective documentary evidence verifying the bona fide nature of the marriage is more substantial than the FDL report, which, counsel asserts, is not conclusive on the issue of whether the signature on the Form I-751 belonged to R-J-. Counsel contends that the FDL report is insufficient to support a finding of substantial and probative evidence of marriage fraud. Counsel submits additional affidavits from the petitioner and [REDACTED]. In his affidavit, the petitioner recalls that he first met R-J- in 1987 or early 1988 while they were in college. He states that they were in the same Algebra class and they started dating after she gave him a ride home after their class. The petitioner recounts in probative detail his ensuing courtship with R-J-, his decision to marry her and their engagement. In her affidavit, [REDACTED] states that she was the petitioner's supervisor from 1989 to 1999 at [REDACTED] where she remains employed as a Senior Program Associate. She recalls that R-J- was also employed at [REDACTED] in a separate division, but would sometimes work overtime in her

division. Ms. [REDACTED] states that she offered advice to the petitioner and R-J- about their decision to get married. She recounts that she personally witnessed the petitioner's interactions with R-J- while they were dating and during the beginning of their marriage. She notes that she saw the petitioner and R-J- together during work related events and outside the workplace at restaurants. Ms. [REDACTED] recalls that she and her ex-husband attempted to help the petitioner and R-J- when they started having marital problems.

Upon an independent and de novo review of the relevant evidence, we find that the petitioner has now demonstrated that he married R-J- in good faith. Although the AAO previously determined that the petitioner submitted documents to legacy INS that did not include R-J-'s actual signature in an attempt to be accorded immediate relative status for the purpose of evading the immigration laws, the petitioner has now provided sufficient documentary evidence of his intent to enter the marriage with R-J- in good faith. The petitioner submitted a detailed and probative statement of his courtship and engagement to R-J-. He has also provided a statement from [REDACTED] his former employer, who describes in probative detail her personal knowledge of the couple's relationship and her frequent interactions with the couple during their courtship and marriage. This evidence combined with the previously submitted statements and documentary evidence establishes that the petitioner did not conspire to enter into a marriage with R-J- for the purpose of evading the immigration laws and section 204(c) of the Act does not apply to this petition. Accordingly, the petitioner has now also demonstrated his eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

Conclusion

On motion, the petitioner has established that section 204(c) of the Act does not apply to his marriage with R-J-. He has also demonstrated his eligibility for immediate relative classification based on his former marriage to S-R-. However, he has failed to establish that S-R- subjected him to battery or extreme cruelty during their marriage. 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.

ORDER: The motion is granted. The appeal remains dismissed and the petition remains denied.