

(b)(6)



U.S. Citizenship  
and Immigration  
Services

Date:

SEP 23 2014

Office: VERMONT SERVICE CENTER

File:

IN RE:

Self-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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Jon Rosenberg".

Jon Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (“the 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 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with his wife during their marriage, that she subjected him to battery or extreme cruelty during their marriage, and that he married her in good faith. On appeal, the petitioner submits a personal statement and copies of documents already included in the record.

*Relevant Law and Regulations*

Section 204(a)(1)(A)(iii)(I) 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 explained in 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any

act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

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(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 explained in 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.

\* \* \*

(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.

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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.

### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Kenya who entered the United States on August 23, 2006, as a nonimmigrant student. The petitioner married L-H-<sup>1</sup>, a U.S. citizen, on August 23, 2007, in Dallas, Texas. The marriage ended in divorce on January 11, 2011. The petitioner filed the instant Form I-360 on October 12, 2011. The director subsequently issued a Request for Evidence (RFE) of the petitioner's joint residence with L-H-, his good faith entry into the marriage, and L-H-'s battery or extreme cruelty. Through counsel, the petitioner timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. *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 evidence submitted on appeal does not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

### *Joint Residence*

In his initial statement, the petitioner recounted that he was in graduate school in Indiana when he married L-H-, who lived in Texas, in August 2007. He stated he traveled back and forth from Indiana to Texas during his last year of school and that immediately after he graduated in 2008, he moved to Texas. The petitioner described how L-H- mistreated him and stated that they ceased living together in February 2010.

The petitioner failed to provide any probative details of their joint residency. For example, he did not describe their apartment, their shared belongings, or provide any other substantive information regarding his residence with L-H- after their marriage. A copy of a bank statement that is jointly addressed to the petitioner and L-H- supports the petitioner's contention on appeal that they commingled finances, but does not establish that they actually resided together. Copies of utility and telephone bills initially submitted with his self-petition are dated at least five months after the couple ceased living together and, therefore, do not show that the petitioner resided with his ex-spouse during the marriage. A letter from [REDACTED] which states that he went to the petitioner's house after receiving an emergency call from the petitioner at 2 a.m., does not indicate when this event occurred and, consequently, does not establish the couple's joint residence during their marriage. Copies of a car insurance card and additional utility bills submitted in response to the RFE are

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

jointly addressed to the petitioner and L-H-, providing some evidence of joint residence. However, without a more probative, detailed account of their joint residence from the petitioner, the preponderance of the evidence does not demonstrate that the petitioner resided with his ex-wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

In his initial statement, the petitioner recounted that his ex-wife yelled loudly at him and called him names in front of her two children which he found demeaning, humiliating, and very insulting. He described how she ridiculed him and punished him by denying him sexual intimacy. The petitioner also recounted having conversations with L-H- about moving back to Kenya together and how she categorically stated she would not leave Texas. According to the petitioner, when arguments with L-H- became too much for him, he would leave and spend the night at a friend's place.

Licensed professional counselor [REDACTED] diagnosed the petitioner with Chronic Posttraumatic Stress Disorder in both the initial psychological evaluation as well as in a follow-up letter. Mr. [REDACTED] stated that L-H- yelled very loudly at the petitioner using graphic language, humiliated him by expressing her dissatisfaction with their sex life, and punished him by not having sexual relations with him.

The petitioner has not alleged any battery and does not describe any behavior by his ex-wife that included actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Although the psychological evaluation and follow-up letter show the petitioner sought mental health treatment, Mr. [REDACTED] did not describe in probative detail any particular incident of battery or other behavior that would constitute extreme cruelty. Similarly, several letters from the petitioner's friends, including from [REDACTED] did not claim the petitioner was subjected to battery or extreme cruelty by his ex-wife, but rather, contended only that L-H- disrespected him, was rude, and made fun of the petitioner.

On appeal, the petitioner explains that he submitted his ex-wife's criminal records to show she was a changed person from the woman he married. Although the criminal records show that L-H- was arrested in November 2008 for the fraudulent use or possession of identifying information, the petitioner has not specified how his ex-wife's arrest establishes that she subjected him to battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi). When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner's wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

*Entry into the Marriage in Good Faith*

In his initial statement, the petitioner explained that he met L-H- on the internet. He briefly recounted visiting her in Texas during one of his school breaks and stated that he had a good time visiting her and meeting her family. According to the petitioner, when he went back to school in Indiana, he realized he was in love with L-H- and they married in August 2007.

The petitioner did not describe in probative detail the couple's courtship, wedding ceremony, or shared residence and experiences apart from the claimed abuse. Although [REDACTED] stated that the petitioner and L-H- seemed to be a very close and fun-loving couple, they did not provide any additional probative information about the couple's relationship or the petitioner's marital intentions. They did not describe, for example, any specific contact with the petitioner and L-H-, any particular visit or social occasion with the couple, or any interactions with the couple that would establish their personal knowledge of the relationship. Although the record includes a joint bank account statement dated April 10, 2009, showing the couple commingled their finances for one month, as well as three utility bills and a car insurance card in both of their names, without a more detailed, probative description from the petitioner regarding his marital intentions, the preponderance of the relevant evidence does not establish that the petitioner entered into marriage with L-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

On appeal, the petitioner has failed to establish that he resided with his ex-wife after their marriage, that she subjected him to battery or extreme cruelty during their marriage, or 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 visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.