

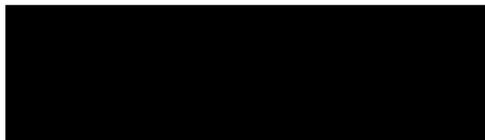
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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Date: **JAN 26 2012** 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:

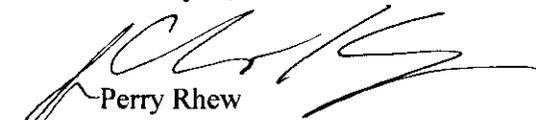


INSTRUCTIONS:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
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: had a qualifying relationship with a U.S. citizen and is eligible for immigrant classification based upon that relationship; entered into marriage with his former spouse in good faith; and that his former spouse subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a statement and additional evidence.

*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:

*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.

\* \* \*

(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 Colombia who entered the United States on July 13, 2005, as a nonimmigrant visitor. The petitioner married C-R-, a U.S. citizen, on July 24, 2009 in Casselberry, Florida and they divorced on January 4, 2010.<sup>1</sup> The petitioner filed the instant Form I-360 on April 20, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's qualifying relationship with a U.S. citizen and eligibility for immigrant classification based upon that relationship, good-faith entry into the marriage, and his former wife's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to fully establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a statement and a psychological evaluation of the petitioner.

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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not fully overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

*Entry into the Marriage in Good Faith*

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In response to the RFE, the petitioner submitted an unsigned and undated statement, in which he provided that he met C-R- in May 2009 through a mutual acquaintance. He briefly recounted that they "went out for dinner, to dance, to church." He stated that he visited her and they spoke daily on the phone. The petitioner recalled that when his children, who reside in Colombia, visited him in June 2009, he and C-R- took them to parks, to church and to C-R-'s home. He stated that he and C-R- became engaged when they went to visit Miami Beach and had a civil wedding ceremony on July 24, 2009. The petitioner stated that he and C-R- had a religious wedding on August 8, 2009 with 50 guests in attendance and they had their honeymoon at Daytona Beach. Although the petitioner described his engagement and wedding, his description of his courtship with C-R- is brief and he did not describe any of their shared experiences during their marriage, apart from the alleged abuse.

The petitioner initially submitted below four brief letters from friends and his pastor who stated that they attended his wedding ceremony, but failed to provide any probative information regarding the petitioner's good-faith intentions in entering the relationship.

The director also accurately assessed the relevant documents submitted below. The petitioner submitted evidence of his wedding preparations including, a wedding invitation with a copy of an invoice for the invitations, wedding cards from friends, photographs taken during the wedding ceremony, and letters from the wedding caterer and decorator. These documents establish that the petitioner had a wedding ceremony, but do not otherwise shed light on his good-faith intentions in marrying C-R-. The petitioner

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

submitted a copy of a blank check reflecting that he and C-R- had a joint checking account and evidence that his paychecks were being directly deposited into the checking account. However, the petitioner did not submit banks statements to establish financial transactions under this account. Lastly, the petitioner submitted nine photographs of him and C-R- that are undated and taken at unspecified locations.

On appeal, the petitioner submits a May 1, 2011 psychological evaluation from [REDACTED] [REDACTED] does not offer any additional probative information on the petitioner's good-faith intentions in entering his marriage. [REDACTED] evaluation simply reiterates the petitioner's accounts of his courtship with C-R- as reflected in the undated and unsigned statement the petitioner submitted in response to the RFE.

On appeal, counsel asserts that the petitioner "submitted all the evidence the [sic] he could rescued [sic] from his former wife before she destroyed everything." Counsel further asserts, "[t]he evidence submitted demonstrates that the bride and groom intended to establish [sic] life together at the time of the marriage and not after that." However, a full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. The relevant documents show that the petitioner and his former wife had a religious wedding ceremony, held a joint checking account for an unspecified duration of time, and were photographed together at unspecified locations. In his undated and unsigned statement, the petitioner briefly describes his courtship with C-R-, but fails to describe their shared experiences, apart from the alleged abuse. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for his wife during their courtship or marriage. The evaluation from [REDACTED] only reiterates the petitioner's previous statement and fails to provide any additional probative information on the petitioner's good-faith intentions in entering his marriage. Accordingly, the petitioner has failed to demonstrate that he entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Battery or Extreme Cruelty*

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In the undated and unsigned statement the petitioner submitted in response to the RFE, the petitioner recalled how he moved into C-R-'s home after their marriage. He stated that in October 2009 C-R- informed him that she wanted a separation because they were "pretty different." He stated that C-R- indicated that she would continue with the immigrant petition she filed on his behalf if he paid her. The petitioner recounted that when he refused to commit fraud, C-R- became angry, yelled at him and told him to leave their marital home. He recalled that he returned to their marital home the next day to find that his belongings were packed. He stated that C-R- yelled at him, threatened him and told him to leave. He stated that C-R- eventually allowed him to remain at their home if he paid rent, and demanded that he give her \$4,000 to continue with his immigrant petition. The petitioner also recalled that in November 2009 he learned that C-R- had filed a divorce petition. He stated that he received e-mails demanding payment and that he sign the divorce petition. The petitioner's statements do not indicate that his 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 petitioner's friend, [REDACTED], briefly stated that C-R- "abused [the petitioner], mistreated him, dumped him out of the house and threatened to call the police." [REDACTED] offers no probative details on the alleged abuse and does not indicate that he has personal knowledge of these incidents. The petitioner's pastor, [REDACTED], stated that when C-R- ended the marriage, the petitioner requested an advisory and spiritual guidance meeting with him. [REDACTED] however, did not mention any alleged incidents of abuse in his statement.

The director correctly determined that the relevant evidence submitted below did not establish that the petitioner was ever battered or subjected to extreme cruelty by his former spouse. The petitioner submitted a receipt for his first counseling session with Catholic Counseling Center, but no evaluation or report was submitted from this center. The petitioner also submitted English translations of e-mail messages he claims are from C-R-. The e-mail messages involve C-R-'s request that the petitioner sign the documents for their divorce, but they do not demonstrate abuse in the marriage.

In the psychological evaluation, [REDACTED] diagnosed the petitioner with Acute Stress Disorder (ASD) and Depressive Syndrome secondary to trauma. [REDACTED] first stated that the petitioner "endured many types of physical abuses. Physical violence is the hallmark of Ms. H----'s abusive behavior. . . . It was not unusual for her to use knives, bottles, glasses, utensils, and other sundry object to inflict pain" (emphasis added). [REDACTED]'s statement is undermined by the fact that he does not name C-R- as the alleged abusive spouse, but another individual, "Ms. H ----." In addition, the incidents of physical abuse briefly described in the evaluation were never mentioned by the petitioner in his own statement. [REDACTED] further stated that the petitioner and C-R- had financial problems because of C-R-'s spending habits and she demanded \$4,000 to continue with the petitioner's immigration petition after their separation. [REDACTED] stated that C-R- humiliated the petitioner in front of his friends, insulted him, used obscene language, called him derogatory names, and threatened to have him deported. [REDACTED] also stated that C-R- isolated the petitioner from his friends, and was jealous and possessive. The petitioner, however, did not mention any incidents of humiliation, isolation and jealousy in his statement. The petitioner instead stated that "[t]hings were going on really well, we had a good relationship and we had no problems but one day by the end of October she told me she wanted to separate because we were pretty different. . . ." The petitioner in his statement conveys that he had a good relationship with C-R- until she decided to separate from him. These differences between the petitioner's statement and the psychological evaluation detract from the credibility of his claim of alleged abuse.

On appeal, counsel asserts that C-R- "questioned [the petitioner's] manhood, his sexuality, and beat him; she was unfaithful to him to the point that [sic] had sex with other men in their own house . . . ." However, none of these incidents were mentioned in the petitioner's own statement.<sup>2</sup> The petitioner's

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<sup>2</sup> Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

undated and unsigned statement does not establish that his wife's behavior involved battery, threats of 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). Although the psychological evaluation from [REDACTED] briefly discusses incidents of alleged physical abuse and extreme cruelty, the petitioner does not mention these incidents in his own statement. The significant differences between the petitioner's statement and the description of the alleged abuse in his psychological evaluation detract from the overall credibility of his claims. Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Qualifying Relationship*

The director correctly determined that petitioner failed to demonstrate a qualifying relationship with his former wife. The record shows that the petitioner and C-R- were divorced on January 4, 2010 before this petition was filed on April 20, 2010. 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 eligibility for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

#### *Conclusion*

On appeal, the petitioner has failed to overcome the director's determinations that he did not have a qualifying relationship with a U.S. citizen and was ineligible for immigrant classification based upon that relationship; that he did not enter into marriage with his former spouse in good faith; and that his former spouse did not subject 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

**ORDER:** The appeal is dismissed.

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