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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

[REDACTED]

B9

Date: JUL 26 2012

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:

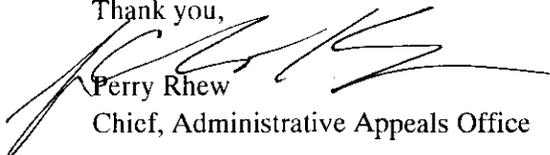
[REDACTED]

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,

  
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 entered into marriage with his wife in good faith and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, 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).

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 Uganda who entered the United States as an A-2 nonimmigrant on September 25, 2006. The petitioner married S-D<sup>1</sup>, a U.S. citizen, in Los Angeles, California on December 14, 2007. The petitioner's wife filed an alien relative immigrant petition on the petitioner's

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

behalf, which was denied on December 30, 2008 along with the petitioner's concurrently filed application for adjustment of status.

The petitioner filed the instant Form I-360 on August 26, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage and his wife's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief asserting that the director erroneously concluded that the petitioner was not a victim of extreme cruelty "as envisioned under" the Act and that the petitioner failed to establish that he entered into the marriage with S-D in good faith. No further evidence was submitted with the appeal.

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. Counsel's claims on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

#### *Entry into the Marriage in Good Faith*

On appeal, counsel asserts that the director erred in determining that the petitioner did not enter into a good faith marriage with S-D- due to the fact that they "did not live together for a period as man and wife" and that "[a] presumption like this by the Service of what constitutes a 'traditional' marriage is in error and should be overturned." Counsel misrepresents the basis for the director's determination that the petitioner did not marry S-D- in good faith with the intentions of having a life together as husband and wife. The director did not find that the petitioner lacked the requisite good faith because he only resided with his wife for nine months. The director determined that the petitioner met the joint residence requirement and simply noted that the majority of joint documentation was dated after the petitioner stated that he and his wife separated. The director correctly concluded that such evidence was not probative of the petitioner's intent at the time he entered the marriage. The director accurately assessed the relevant documents submitted below. The record contains copies of photographs of the petitioner and S-D- on their wedding day and undated photographs taken on two unidentified occasions. The record also contains: unsigned and undated income tax returns of the petitioner for 2008 and 2009 indicating that he was "married filing separately;" a copy of a life insurance policy for the petitioner listing S-D- as the sole beneficiary dated July 21, 2011, two years after the petitioner stated that he and his wife separated in July of 2009; copies of credit cards issued to the petitioner and S-D- in July and August of 2010, approximately a year after their separation; a joint bank statement dated February 18, 2011, over a year after their separation; a copy of a cancelled check; and a copy of an automobile insurance policy for the petitioner, dated June 6, 2011, that lists S-D- as a driver even though they were separated for nearly two years by that time.

Regardless of these deficiencies, 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.” 8 C.F.R. § 204.2(c)(2)(vii).

In this case, however, the affidavits do not demonstrate the petitioner’s entry into his marriage in good faith. In his first affidavit, dated August 24, 2010, the petitioner stated that he met his wife in 2007 at a friend’s party. He stated, “We became good friends and talked a great deal on [the] phone when she went back to California. I fell in love with her and totally opened up my life for her. . . . We intensified our love and I requested that we move in together because the long distance relationship was killing me.” The petitioner stated that when he moved to California, he was surprised to find out that S-D- had two children and that this “was a big shock because she had never mentioned about them in our conversations.” He further stated, “She comforted me and I brushed that aside.” In response to the RFE, the petitioner submitted a second affidavit, dated August 8, 2011, in which he repeated his earlier statements and added that he met his wife in September of 2007 and the “relationship was so good” that they got married in December and celebrated at home because they did not have “enough money for a wedding reception.” The petitioner briefly listed their common interests and expressed his happiness that they were getting along with each other’s friends and family. Apart from also mentioning their favorite restaurants and the first gifts S-D- gave him, the petitioner did not further describe their engagement, wedding, joint residence or any of their shared marital experiences, apart from the alleged abuse. The petitioner’s testimony does not establish that he entered into marriage with S-D- in good faith, as he failed to provide probative details regarding his relationship with her.

In response to the RFE, the petitioner submitted letters from his mother, his sister, and six friends. The petitioner’s mother, [REDACTED] who resides in Uganda, stated that she spoke the petitioner and his wife on several occasions when they would call to say hello. The petitioner’s sister, [REDACTED] stated that the petitioner told her about S-D- and their marriage and that she had dinner with them once in July 2009. [REDACTED] briefly described visiting the petitioner and S-D- at their house in California and seeing “how the two were deeply in love as they occasionally showed each other affection.” [REDACTED] stated that the petitioner told him he was happily married in January 2008 and that he once spoke to S-D- on the telephone. [REDACTED] described meeting the petitioner and S-D- for dinner in July of 2009 and witnessing “the love they had for each other, kissing in public, serving each other.” She also stated that she visited their home often but stopped after S-D- became jealous. [REDACTED] stated he met S-D- at their home and had dinner with them once in March 2008. [REDACTED] stated that the petitioner loved his wife and mourned her abandonment but he does not indicate that he ever saw the petitioner and his wife together. [REDACTED] stated that he met S-D- once in July of 2009 and that the petitioner told him he loved her.

These individuals briefly discussed the petitioner’s marriage, but spoke predominately of the alleged abuse, and provided no probative information regarding the petitioner’s good faith in entering the relationship. Likewise, none of the petitioner’s family or friends discussed in probative detail their observations of the petitioner’s interactions with or feelings for his wife during their courtship or marriage.

Accordingly, the petitioner has failed to demonstrate that he entered into marriage with his 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 counsel's brief submitted on appeal fails to overcome this ground for denial. In his first affidavit, the petitioner stated that the "genesis of [S-D-'s] rapid change of behavior and attitude" towards him happened when they discovered that he had a low sperm count. He stated that after this discovery, S-D- began to drink heavily, belittle him in front of others, accuse him of having girlfriends, and call him names. The petitioner recounted finding her kissing another man on their sofa, repeatedly threatening him with deportation, and ultimately falsely accusing him of raping her. In his second affidavit, the petitioner reiterated his prior statements and added that S-D- "began developing violent fantasies, impulses and behaviors." He stated that she began breaking glasses and bottles in the house whenever she became angry. He stated that she told him that if he wanted to visit with his friends he was free to go but not to bother coming back to her house. The petitioner also recounted one incident when S-D- criticized his cooking and then poured her juice on him. He stated that matters were made worse by his "failure to make a baby after several endeavors" due to his low sperm count. The petitioner also described S-D-'s repeated financial demands and disturbing text messages. The petitioner's statements do not demonstrate 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 family and friends attested to his troubled marriage, but their statements also fail to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. The petitioner's mother stated that her son now feels worthless because his plans have been shattered. His sister stated that he should "think about leaving her if she had someone else." His friends all similarly discussed S-D-'s infidelity, financial demands and disturbing text messages. Their statements do not provide sufficient detailed, probative accounts of battery or extreme cruelty inflicted by S-D-.

The petitioner initially submitted a copy of the police incident report that was filed when S-D- accused the petitioner of raping her as evidence of her extreme cruelty. The director correctly determined that the police report did not contain sufficient detail on record to indicate that S-D- made the claim to exert power and control over the petitioner. In response to the RFE, the petitioner submitted: a psychosocial clinical evaluation prepared by [REDACTED] a letter from [REDACTED] and copies of two medical printouts dated November 15, 2010 and December 22, 2010 for visits with his [REDACTED]. [REDACTED] concluded that the petitioner has symptoms of "Depression, Primary Insomnia, Post-Traumatic Stress Disorder and Generalized Anxiety Disorder" that she attributed to his wife's emotional and psychological abuse. While we do not question [REDACTED] professional expertise, her assessment of the abuse is based on her interview of the petitioner, which, as described in her evaluation, provides no further, substantive information demonstrating that the actions of S-D- constituted extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi). The letter from the petitioner's pastor concludes that the petitioner is "very paranoid at the present time" and that he is devastated that his wife left him but does not describe any extreme cruelty. The medical printout dated November 15, 2010 states that the

petitioner is a new patient being treated for depression and briefly states that his wife “left last year” but does not mention any domestic violence. The report dated December 22, 2010 notes that the petitioner was prescribed medication for insomnia but does not mention the petitioner’s wife or any domestic violence as a causative factor in his mental health conditions.

The director concluded that the relevant evidence submitted established that the petitioner’s wife engaged in behavior which led to the breakdown of his marriage, but that the record did not establish that the petitioner’s wife subjected him to battery or extreme cruelty. On appeal, counsel claims the petitioner’s wife engaged in “physical violence, psychological threats, economic abuse, and intimidation” and that the director’s conclusion “flies in the face of reason, logic, and the overwhelming evidence submitted in this case.” Counsel fails to articulate, however, how the relevant evidence demonstrates that any specific behaviors of the petitioner’s wife constituted battery or extreme cruelty. For example, while threats of deportation may be a form of extreme cruelty in certain situations, counsel fails to acknowledge that in this case, the record contains no probative account of such threats. The petitioner’s brief references to his wife’s statements about calling the police and getting him sent back to Uganda do not indicate, for example, that her threats were part of a pattern of coercive control or otherwise constituted psychological abuse.

Counsel further misrepresents the two printouts from [REDACTED] as a “detailed psychological report” that directly linked the petitioner’s ongoing psychological problems with the actions of S-D-. The printouts very briefly state the petitioner’s symptoms and diagnosis of depression with anxiety and insomnia. No conclusion is made by [REDACTED] in these reports linking the petitioner’s depression with the actions of S-D-. The affidavits of the petitioner and his family and friends attest to his troubled marriage, his wife’s maltreatment and his depression. Their letters do not establish, however, that the petitioner’s 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). 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.

### *Conclusion*

On appeal, the petitioner has failed to overcome the director’s determinations that he did not establish the requisite entry into the marriage in good faith and battery or extreme cruelty. 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.