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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  
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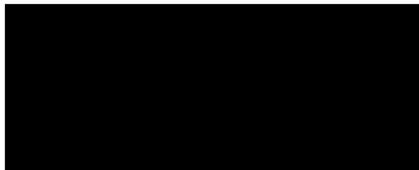
Date: **MAR 16 2012**

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:

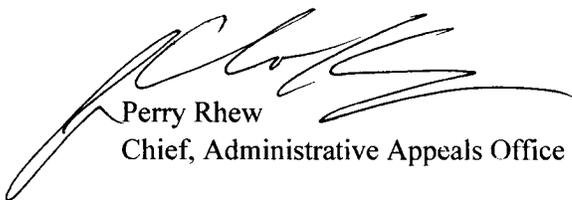


**INSTRUCTIONS:**

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: has a qualifying relationship as the spouse of a U.S. citizen; is eligible for immigrant classification based upon a qualifying relationship; entered into marriage with his wife in good faith; resided with his wife; and was subjected to battery or extreme cruelty by his wife during their marriage.

On appeal, counsel submits a brief reasserting the petitioner’s eligibility 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).

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:

(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.

\* \* \*

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages . . . .

(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.

\* \* \*

(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 Saint Lucia who was admitted to the United States on May 4, 2003, as a nonimmigrant visitor. The petitioner married J-J-<sup>1</sup>, a U.S. citizen in Jersey City, New Jersey on February 27, 2009. The petitioner filed the instant Form I-360 on January 10, 2011. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for failure to establish that the petitioner: has a qualifying relationship as the spouse of a U.S. citizen; is eligible for immigrant classification based upon a qualifying relationship; entered into marriage with his wife in good faith; resided with his wife; was subjected to battery or extreme cruelty by his wife; and is a person of good moral character. The petitioner, through counsel, timely responded with additional evidence which the director found sufficient to demonstrate the petitioner's good moral character, but insufficient to meet the remaining criteria. The director denied the petition and counsel timely appealed.

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 overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

### *Qualifying Relationship*

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship and evidence of the citizenship of the U.S. citizen spouse. The petitioner initially submitted a New Jersey marriage certificate reflecting that he and J-J- wed on February 27, 2009 in Jersey City. In response to the NOID, the petitioner submitted a copy of the biographical page from the U.S. passport of an individual named J-M-, evidence of J-M-'s naturalization, and a baptism and birth certificate for J-J-. In denying the petition, the director determined that the submitted evidence did not demonstrate that J-M- and J-J- are the same person and was insufficient to establish that the petitioner had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship.

On appeal, the petitioner explains that J-M- is the same person as J-J-. He states that J-J- is her maiden name and she changed it to J-M- during her prior marriage. The petitioner submitted a copy of a judgment granting J-M- a divorce from T-M- on June 28, 1999. Upon a full review of the record,

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<sup>1</sup> Name withheld to protect identity.

including the additional evidence submitted on appeal, we find that the petitioner has submitted sufficient credible evidence to demonstrate that his spouse is a U.S. citizen. Department of Homeland Security records show the birth date and parental names of J-M- to be identical to the information provided on J-J-'s baptism and birth certificate and the marriage certificate issued to J-J- and the petitioner. This evidence, along with J-M-'s divorce decree, demonstrates by a preponderance of the evidence that J-J- and J-M- are the same person. Therefore, the petitioner has established that he has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

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

The relevant evidence submitted below and on appeal demonstrates the petitioner's entry into his marriage in good faith. The petitioner initially submitted several photographs from his wedding and two photographs of himself and his wife. In the affidavit submitted in response to the NOID, dated February 22, 2011, the petitioner briefly discussed how he first met his wife, their courtship, wedding ceremony and shared residence. In response to the NOID, the petitioner also provided letters from six of his friends, [REDACTED] and [REDACTED] who briefly attest to knowing of the petitioner's marriage to his wife, but spoke predominately of the alleged abuse.

On appeal, counsel asserts that the petitioner has detailed his courtship with his wife in his second affidavit and it shows that his marriage was not entered into for the primary purpose of circumventing the immigration laws. De novo review of the record establishes that the petitioner married his spouse in good faith. In the petitioner's second affidavit, dated July 26, 2011, he provides a probative, detailed and credible account of how he first met his wife, their courtship, engagement, wedding ceremony, joint residence and shared experiences. When viewed in the totality, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Joint Residence*

The evidence submitted on appeal also demonstrates that the petitioner resided with his wife. On the Form I-360, the petitioner stated that he lived with his wife from February 2009 until "present" and that their last joint address was in Brooklyn, New York.<sup>44</sup> The director found this address to be inconsistent with the petitioner's submission of a two-year lease agreement that reflects he and J-M- were jointly responsible for tenancy at an apartment in Jersey City starting one month prior to their marriage. The director noted that the lease agreement was under the name J-M- and the petitioner had not established that J-M- and J-J- are the same person. As discussed, the petitioner has now established with credible documentary evidence that J-M- and J-J- are the same person, therefore he has established that the lease was issued to him and his wife for their joint residence. On appeal, the petitioner explains that he resided at the address he provided on the Form I-360 with his sister in Brooklyn prior to his marriage and moved back to her residence after he separated from his wife. He also explains that he resided with his wife in Jersey City, New Jersey during their marriage and describes their shared residential routines in detail. Accordingly, the record establishes by

a preponderance of the evidence that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) 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 his first affidavit, the petitioner recounted that when he went out his wife would call his cellular telephone several times, would check his telephone messages when he came home, would demand to know who was calling him, and would accuse him of seeing other people. He stated that when he confronted his wife about her actions she threw things at him, cursed at him and threaten to have him deported. He further recounted that she put bleach on his clothes, refused to file an immigration petition on his behalf, had an extramarital affair, and demanded sexual intimacy. The petitioner stated that he was hospitalized for three days due to stress. On appeal, the petitioner reiterates the incidents described in his first affidavit. He also submits photographs of clothes that he claims were bleached by his wife. The petitioner's brief statements are insufficient to establish that his wife 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 submitted copies of medical records, dated May 27, 2010, from the [REDACTED]. The physician's notes are illegible and the records fail to show any connection between the petitioner's medical condition and his wife's alleged battery or extreme cruelty.

In response to the NOID, the petitioner submitted an evaluation from [REDACTED] a licensed psychotherapist, dated February 14, 2011. [REDACTED] diagnosed the petitioner with recurrent and severe major depressive disorder with the first episode occurring in 2002, seven years before his marriage. [REDACTED] attributed the petitioner's symptoms to his wife's extreme cruelty and his fear of deportation. While we do not question [REDACTED]'s professional expertise in assessing the petitioner's mental health, [REDACTED] did not provide probative, detailed information sufficient to establish that the petitioner's wife's behavior constituted extreme cruelty in either his initial evaluation or his June 20, 2011 evaluation submitted on appeal.

The petitioner's friends describe the petitioner as being depressed and stressed after his marriage. [REDACTED] and [REDACTED] also briefly described the petitioner's wife as possessive and stated that she restricted him from socializing with them. Their brief statements also fail to provide probative details to demonstrate that the petitioner's wife subjected him to extreme cruelty.

On appeal, counsel asserts that "the petitioner was subjected to cruel and inhuman treatment by his spouse through aggravated moral misconduct done by incessant commission of violence and general bad behavior." Counsel fails to articulate, however, how the relevant evidence demonstrates that these specific behaviors of the petitioner's wife constituted extreme cruelty. The psychological evaluations, letters from the petitioner's friends and the petitioner's affidavits fail to provide probative details on the alleged abuse. The submitted medical records are of little probative value because they are not legible.

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 established that: he has a qualifying relationship as the spouse of a U.S. citizen; is eligible for immigrant classification based upon that qualifying relationship; entered into the marriage in good faith; and resided with his spouse. However, he failed to establish that he was subjected to battery or extreme cruelty by his wife. 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.

**ORDER:** The appeal is dismissed.