



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date:

Office: VERMONT SERVICE CENTER

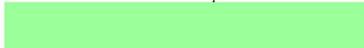
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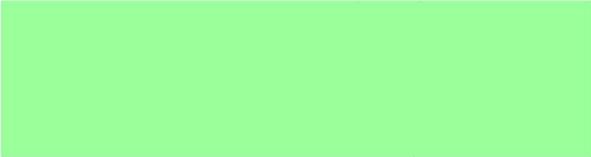
IN RE:

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 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,

Ron Rosenberg  
Acting 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 former United States citizen spouse.

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen, his corresponding eligibility for immediate relative classification, that he entered into marriage with his former wife, a U.S. citizen, in good faith and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner, through 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). 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:

(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 the Philippines who entered the United States on June 7, 2003 as a B-2 visitor. The petitioner married K-L-<sup>1</sup>, a U.S. citizen, in Las Vegas, Nevada on [REDACTED]. The two were divorced on February 9, 2009. The petitioner filed the instant Form I-360 on November 30, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty by K-L- against him and of his good-faith entry into marriage with K-L-. 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 the petitioner timely appealed.

On appeal, counsel asserts that the petitioner provided sufficient evidence to establish the requisite battery or extreme cruelty and good-faith marriage intentions.

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

*Battery or Extreme Cruelty*

We find no error in the director's determination that the petitioner's former wife did not subject him to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavit and a psychological evaluation report from [REDACTED].

In his affidavit, the petitioner stated that shortly after their marriage, K-L-'s attitude toward him started to change and she began treating him with disrespect. He stated that she called him names, cursed at him, and threatened him with deportation if he did not find a job. He stated that he suffered emotionally and had nightmares about K-L- screaming at him. The petitioner did not cite to specific examples or incidents of abuse or provide any probative details about K-L-'s treatment of him. The petitioner's statements do not demonstrate that his former 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 psychological evaluation from [REDACTED] did not provide any additional information regarding the claimed abuse. [REDACTED] indicated that the clinical interview revealed that the petitioner was experiencing Posttraumatic Stress Disorder that resulted from the physical and psychological abuse by K-L-. However, the evaluation does not provide any probative details regarding any battery or extreme cruelty inflicted by K-L- upon the petitioner. While we do not question [REDACTED] professional expertise, his assessment conveys the petitioner's statements during his interview with him, and provides no further, substantive information regarding the claimed abuse.

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

On appeal, counsel asserts that the petitioner has provided sufficient credible evidence to establish that he was subjected to extreme cruelty by K-L- but he fails to articulate how the relevant evidence demonstrates that any specific behaviors of the petitioner's former wife constituted battery or extreme cruelty. The petitioner's affidavit and [REDACTED] evaluation do not contain sufficient, probative information to establish the claimed abuse. Accordingly, the petitioner has not established that his former 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.

*Entry into the Marriage in Good Faith*

The director also correctly determined that the petitioner failed to establish that he married K-L- in good faith. The record contains the petitioner's affidavit, [REDACTED] bank letters, copies of their 2007 and 2008 federal income tax return transcripts showing their filing status as married filing jointly, photographs of the petitioner and K-L- on several, unidentified occasions, and an affidavit from friend [REDACTED]. The photographs showed that the petitioner and K-L- were pictured together but they did not establish the petitioner's marital intentions. The joint bank letters from [REDACTED] stated that the petitioner and K-L- opened three separate accounts on June 22, 2007, approximately two months prior to getting married. The director noted that the letters stated the current balance of each account but that there was no evidence that the accounts were used by both parties. The federal income tax transcripts alone were insufficient to establish that the petitioner married K-L- in good faith.

Nonetheless, 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." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the statements of the petitioner and his friend do not provide sufficient probative information to establish his good-faith intent upon marrying K-L-. In his affidavit, the petitioner stated that he married K-L- on [REDACTED] and they decided to live in Las Vegas, Nevada. He further stated that she asked him to find a job which he planned on doing anyway because they were going to live together and start their family. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. The affidavit from the petitioner's friend, [REDACTED] was very brief and did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing his personal knowledge of the relationship. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

On appeal, counsel submits a copy of the petitioner's divorce decree, which demonstrates that the petitioner's marriage to K-L- ended within two years before this petition was filed. Nonetheless, the petitioner has not established a qualifying relationship with K-L-. The petitioner failed to establish the requisite battery or extreme cruelty and 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 corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

*Conclusion*

On appeal, the petitioner has failed to establish that K-L- subjected him to battery or extreme cruelty during their marriage and that he entered the marriage in good faith. The petitioner has also failed to establish a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification. 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.