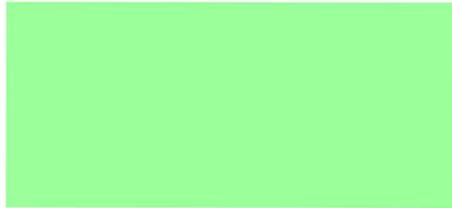


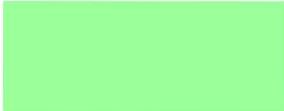


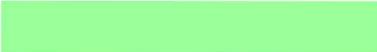
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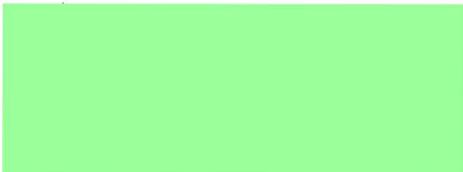
Date: **AUG 05 2013**

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 (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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) revoked approval of the immigrant visa petition after properly notifying the petitioner 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 United States citizen spouse.

The director revoked approval of the petition on the basis of his determination that the petitioner failed to establish that he was eligible for immediate relative classification based on his relationship with his former wife, that she subjected him to battery or extreme cruelty during their marriage, that he is a person of good moral character, and that he entered into the marriage in good faith. On appeal, the petitioner, through counsel, submits a brief.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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:

(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.

(vii) *Good moral character*. A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

(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.

* * *

(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.

(v) *Good moral character*. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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, a citizen of [REDACTED], a citizen of the United States, on March 29, 2003. They were divorced on July 9, 2009. He filed the instant Form I-360 on September 14, 2009 and it was approved on February 18, 2010. The director issued a Notice of Intent to Revoke (NOIR) approval of the self-petition on September 14, 2012, and notified the petitioner that his petition may have been granted in error. The director stated that after a full review of the administrative record, the petitioner had failed to establish that he had a qualifying relationship with [REDACTED] and was eligible for immediate relative classification based on that relationship, that he was subjected to battery or extreme cruelty by her, that he is a person of good moral character, and that he married her in good faith. The petitioner, through counsel, submitted a timely response which the director, with the exception of determining that the petitioner established that he had a qualifying relationship with [REDACTED] found insufficient to overcome his proposed grounds for revocation. The director revoked approval of the petition on January 9, 2013.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's grounds for revocation. Beyond the director's decision, the petitioner failed to establish that he had a qualifying relationship with a U.S. citizen.² The appeal will be dismissed and approval of the petition will remain revoked 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 petitioner submitted a psychological evaluation from E. [REDACTED], Licensed Clinical Professional Counselor (LCPC), and letters from friends. In her evaluation, [REDACTED] stated that the petitioner has been suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood caused by the breakup of his family. While we do not question [REDACTED]'s professional expertise, her assessment of the abuse is general and does not contain probative information that [REDACTED] treatment of the petitioner involved actual or 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).

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include... other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In this case, the petitioner did not submit a personal statement but submitted letters from his friends instead. The letters from the petitioner's friends submitted below, although

¹ Name withheld to protect the individual's identity.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

many, were brief and provided general descriptions about [REDACTED] insulting the petitioner, yelling at him, or hitting him. None of the letter writers provided any probative information regarding these specific incidents of abuse or described any other specific incidents of abuse that they witnessed. The director correctly determined that these letters were insufficient to demonstrate that [REDACTED] ever subjected the petitioner to battery or extreme cruelty. On appeal, counsel argues that there is no evidence that the proof submitted with the initial filing was not enough to substantiate the petitioner's case but he does not address the deficiencies of the letters as referenced in the NOIR nor does the petitioner provide a personal affidavit as requested in the NOIR. When viewed in the aggregate, the relevant evidence in the record is insufficient to establish that [REDACTED] battered the petitioner, or that her behavior 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 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.

Good Moral Character

The director correctly determined that the petitioner failed to establish his good moral character. Primary evidence of a self-petitioner's good moral character is his or her affidavit. *See* 8 C.F.R. § 204.2(c)(2)(v). The affidavit should be accompanied by a police clearance from each place the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition. *Id.* The petitioner did not submit an affidavit attesting to his good moral character. The petitioner submitted a criminal background check from the [REDACTED] Police Department based on a name and date of birth search showing that he had not been arrested in [REDACTED]. A review of the administrative record shows that the petitioner moved to [REDACTED] in October of 2008 where he currently resides. The petitioner failed to submit a local police clearance from [REDACTED]. The [REDACTED] clearance report is therefore insufficient to establish his good moral character. Accordingly, the petitioner has failed to demonstrate that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to establish that he married [REDACTED] in good faith. The relevant evidence in the record contains letters from friends, joint bank statements, a 2007 federal income tax transcript showing the filing status as married filing jointly, and a 2008 federal income tax return showing his filing status as married filing separately. The bank statements demonstrated that [REDACTED]'s name was on these accounts but there is no evidence that the account was used by both parties. The federal income tax transcript and return alone were insufficient to establish that the petitioner married [REDACTED] 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 petitioner did not submit a self-affidavit or any other type of personal statement and the letters from his friends spoke predominantly of the claimed abuse and did not further describe in probative detail the petitioner's relationship with [REDACTED] and his intentions upon marrying her.

On appeal, counsel argues that there is nothing in the record to suggest that the petitioner and [REDACTED] were not a couple. Counsel further argues that the fact that [REDACTED] filed the Form I-130 Immigrant Petition for Alien Relative on the petitioner's behalf and under penalty of perjury is evidence of the petitioner's good-faith marriage. That petition was denied, but even if it had been approved, the fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition might not standing alone prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws."). Although similar, the parties, statutory provisions and benefits procured through sections 201(b)(2)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. The petitioner's former wife was the petitioner and bore the burden of proof in the prior Form I-130 adjudication, in which she was required to establish her citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also his own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The regulations for self-petitions under section 204(a)(1)(A)(iii) of the Act further explicate the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). No additional evidence was submitted on appeal. 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

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, beyond the director's decision, the petitioner has also 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

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the director had good and sufficient cause to revoke approval of the petition. Accordingly, the appeal will be dismissed and the approval of the petition will remain revoked for the reasons stated above, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.