



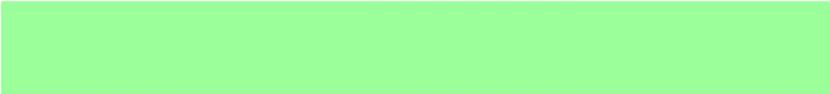
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 07 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:

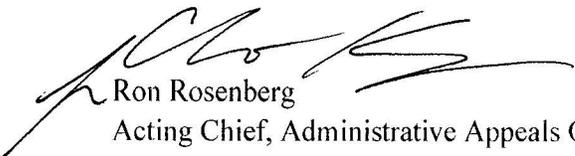
SELF-REPRESENTED

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 Vermont Service Center director (“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 under 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 a United States citizen.

The director denied the petition for failure to establish that he entered into marriage with his United States citizen spouse in good faith and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits 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 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)(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 or the self-petitioner's child, 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.

Facts and Procedural History

The petitioner is a citizen of the Dominican Republic who entered the United States on December 6, 2004 as a visitor. He married J-D-¹, a U.S. citizen, on September 2, 2008 in New York City, New

¹ Name withheld to protect the individual's identity.

York. The petitioner filed the instant Form I-360 on May 16, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty and entry into marriage with J-D- in good faith. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

The AAO reviews these proceedings *de novo*. 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 denial. 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 wife did not subject him to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's notarized letter and a notarized letter from [REDACTED].

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 his letter, the petitioner stated that after a while into the marriage, he came home from work one day and found J-D- very depressed and suicidal. He stated that J-D- was depressed because she had been abused in a past relationship, missed her two children, and also felt physically unwell. He stated that she left for Chicago and while there, she telephoned him that she was pregnant with twins. The petitioner stated that J-D- later miscarried and that this became a turning point for their marriage. The petitioner stated that when J-D- came home, they tried to make the marriage work but that she was still depressed and ultimately abandoned him which affected him greatly. The petitioner's statement fails to 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). In her letter, [REDACTED] stated J-D- had personal conflicts back at home in Puerto Rico and that J-D- abandoned the petitioner. She did not provide probative information regarding any specific incidents of abuse and the director was correct in finding her letter insufficient to demonstrate that J-D- ever subjected the petitioner to battery or extreme cruelty.

On appeal, the petitioner submits another notarized letter and notarized letters from [REDACTED] and [REDACTED]. In his letter, the petitioner states that after an illness, J-D- suspected that the petitioner had given her a sexually transmitted disease. The petitioner states that he felt insulted because he loved her and had only been intimate with her. He states that she became verbally and mentally abusive and made public scenes. The petitioner further recounts that J-D- threatened to kill herself if he went out with his friends so he stayed at home. He states that she abandoned him by moving to Chicago and that he sank into a depression because of this. He states that J-D- returned to him and although they tried to make it work, she continued to insult him and ultimately left him. The petitioner states that when she left, he fell apart and became very depressed but he does not provide additional probative information to establish that J-D- battered him or inflicted extreme cruelty upon him. In his letter,

states that he witnessed the petitioner's frustration and devastation after J-D- abandoned him. states that he is the petitioner's brother and lived with him and J-D- during their marriage. He states that he witnessed the petitioner and J-D- have many arguments and that J-D- was verbally abusive. He states that she threatened to throw herself out of the window if the petitioner went out and that when she left, the petitioner was devastated. Neither nor provide any probative details regarding specific incidents of abuse. 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.

Good-Faith Entry into the Marriage

The director further correctly determined that the petitioner failed to establish that he married J-D- in good faith. The relevant evidence on the record contains the petitioner's letter and a letter from . 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 his letter, the petitioner stated he met J-D- at a nightclub and that they danced all night. He stated that they exchanged telephone numbers and started a friendship that turned into a beautiful romance. He stated that they met each other's families and that after a few weeks of dating, he felt ready to ask her to marry him. He stated that he proposed, J-D- said yes, and the two got married on September 8, 2008 at the courthouse. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. In her letter, briefly stated that she witnessed the petitioner's relationship with J-D- in its early stages and as their love grew. She stated that she saw them both be very much in love with each other but did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing her personal knowledge of the relationship.

On appeal, the petitioner submits another personal letter, letters from his friend and brother, cellular telephone bills, and J-D-'s medical bills. The telephone bills are either dated just before J-D- left the petitioner or after the two were separated and as such, they have little probative value in demonstrating that the petitioner entered into his marriage in good faith. The medical bills show that J-D- underwent pregnancy tests in August and October of 2008 but do not establish the petitioner's paternity or otherwise show that the petitioner married her in good faith. In his letter, the petitioner does not add any probative details regarding his relationship with J-D- apart from the claimed abuse. Likewise, the letters from and state that they know the petitioner and J-D- as a married couple in love but they do not provide sufficient probative information to establish the petitioner's good-faith intent upon marrying J-D-. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate 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.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. He has not demonstrated that he was subjected to battery or extreme cruelty by his wife during their marriage and that he entered into marriage with her in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.