



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **DEC 12 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
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 the petitioner entered into marriage with his United States citizen spouse in good faith, and that she battered or subjected him to extreme cruelty during this marriage.

On appeal, counsel submits a brief and previously submitted 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). 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 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 Bangladesh who married S-E-¹, a U.S. citizen, on February 11, 2008 in Bangladesh. He entered the United States on June 20, 2009 on a K-3 nonimmigrant visa as the spouse of a U.S. citizen. The petitioner and his spouse divorced on October 19, 2009. The petitioner filed the instant Form I-360 on May 13, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty and entry into marriage with S-E- in good faith. The petitioner timely responded with additional evidence, which the director found insufficient to establish that the petitioner was battered or subjected to extreme cruelty, and had entered into his marriage in good faith, and denied the petition. The petitioner timely 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. In addition, beyond the director's decision, the petitioner has not demonstrated a qualifying spousal relationship with a U.S. citizen, and corresponding eligibility for immediate relative classification.²

Good-Faith Entry into the Marriage

De novo review of the evidence submitted below fails to demonstrate that the petitioner married his spouse in good faith. 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). The record contains an affidavit from the petitioner dated March 8, 2011. The petitioner briefly recounted in his affidavit that he received a marriage proposal from S-E-'s parents and relatives in May 2007 and presented the proposal to his parents. He briefly declared that after the arranged marriage was agreed upon, he communicated with S-E-'s mother regularly. After S-E- and her family came to Bangladesh in February 2008, the petitioner stated that he introduced them to his family, and on February 11, 2008 he wed S-E- in a temple before family and friends. The petitioner briefly asserted that while waiting for a visa, he often communicated with S-E-'s family, and arrived in the United States to live with his former wife in June 2009. The petitioner does not describe in any detail the arrangements for his marriage, and his engagement and marriage ceremony; his joint residence with S-E- or any of their shared experiences, apart from the claimed abuse.

The photographs in the record show the petitioner and his former wife at their wedding ceremony and unidentified individuals who attended the event, but without probative statements from the

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).

petitioner or other relevant evidence regarding his entry into the marriage, the photographs alone are not sufficient to establish the petitioner's intentions in marrying his former wife.

On appeal, counsel argues that the facts in the petitioner's case are similar to those in *Gaur v. Gonzalez*, 124 Fed. Appx. 738 (3d Cir. 2005)(unpublished), wherein the petitioner demonstrated that he entered into marriage with his wife in good faith. As this case arose outside of the Fifth Circuit, *Gaur* is not a binding precedent.

Even if *Gaur* were binding on this case, the facts in *Gaur* are not similar to those in the case at issue. *Gaur* was able to demonstrate that his brief marriage was bona fide on the basis of his testimony about their arranged marriage, his explanation about not seeing his wife off at the airport, the many letters he wrote to his wife during their two-year separation, his wife's refusal to leave her brother's home, his move to Pittsburgh without her; and his grandmother's testimony. In the instant case, the petitioner has not established his good-faith entry into marriage with his former wife because he does not describe in any detail their arranged marriage, his communications with S-E prior to and during their engagement, their contact after they wed and prior to the petitioner's arrival in the United States, and their shared residence or any of their other shared experiences during their four-month marriage, apart from the abuse. The petitioner also has not provided affidavits from persons with personal knowledge of his relationship with his former wife, or any other credible relevant evidence of the petitioner's entry into their marriage in good faith.

Counsel asserts that the petitioner was granted a K-3 visa because the petitioner demonstrated that his marriage was "real and true since its inception." 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 immigration status. See *INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. INS*, 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."). In this case, the petitioner provided only a cursory description of his marriage and the remaining, relevant evidence lacks probative information sufficient to meet his burden of proof.

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 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, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(aa). The regulations for self-petitions under section 204(a)(a)(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). Accordingly, the approval of his former wife's Form I-130 petition and the petitioner's K-3 visa do not bar an examination of the petitioner's good-faith entry into his marriage or relieve the petitioner of his burden to establish this statutory requirement in this case. Moreover, in making a decision on a self-petition the Service has sole discretion to determine what evidence is relevant and credible and

the weight to be given that evidence. 8 C.F.R. § 204.2(c)(2)(i). When viewed in the totality, 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.

Battery or Extreme Cruelty

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). The petitioner stated in his affidavit that S-E-’s parents did not disclose to him that their daughter took medication for mental disorders, and falsely claimed S-E- was a good cook and a high school graduate. The petitioner briefly asserted that he had to take care of his former wife, who kicked the petitioner in her sleep, and kicked the door while he was in the restroom. The petitioner also briefly declared that his former wife and her parents made the petitioner perform all household chores, wash their cars, do the laundry and that while they ate home-cooked meals, they gave him fast food sandwiches to eat by himself and he was afraid they contaminated his food and beverages. The petitioner also stated that they teased him, said they would return the petitioner to Bangladesh, and delayed taking the petitioner for treatment for stomach pains.

The petitioner briefly contended that he did not want to divorce S-E- because of the dishonor it would bring him, but that S-E-’s father arranged the divorce and only after the divorce did S-E-’s parents return his passport and \$300, but an airline ticket shows that the petitioner was scheduled to travel to Dhaka, Bangladesh, on August 18, 2009, before his divorce. The petitioner stated that he was very upset after S-E-’s parents abandoned him at the airport, and thought about the dishonor he would endure in Bangladesh from his divorce. The petitioner asserted that after he met a man at the airport who told him that it is not dishonorable to be divorced in the United States, the petitioner decided to stay in the United States. The petitioner stated that from the airport he had nowhere to go and boarded a bus and went to a church for help. He stated that people at a church gave him clothes and shoes, and found a doctor for him, and gave the petitioner a list of shelters and bus tickets. The petitioner declared that he lives in homeless shelters because he does not have work authorization. The petitioner indicated that he has not been able to obtain his immigration records from the lawyer who filed his adjustment application. The petitioner asserted that he has anxiety, depression, insomnia, and mental stress. Medical records reflect that since November 2009 after his divorce, the petitioner regularly received psychiatric care for depression. The record shows that the petitioner has clinical depression, and was mistreated by S-E- and her family, but the petitioner does not describe in detail any particular incident where S-E-’s nonviolent actions were equivalent to psychological or sexual abuse; and the relevant evidence does not establish that S-E-’s behavior was part of an overall pattern of violence or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In his letter, [REDACTED], executive director of [REDACTED] briefly stated that the petitioner has been a client of his organization since 2009, and that the petitioner has no home, no money, and an expiring visa due to his former wife’s abandonment of him. In her affidavit, [REDACTED] a Licensed Master’s Social Worker and Director of Social Services with the [REDACTED] [REDACTED] briefly asserted that the petitioner described his former wife’s behavior as

“bizarre, inappropriate.” Ms. [REDACTED] stated that the petitioner’s wife “was insane and violent,” and that the petitioner was treated as an object to be used by his former wife and her family. Mr. [REDACTED] and Ms. [REDACTED] do not describe any specific incidents where S-E- battered the petitioner, or subjected the petitioner to conduct or a course of conduct that was equivalent to psychological or sexual abuse, or otherwise constituted extreme cruelty.

On appeal, counsel cites *Hernandez v. Ashcroft*, 345 F.3d 824, 838 (9th Cir. 2003), to argue that Congress intended extreme cruelty to include non-physical aspects of domestic violence. Counsel contends that S-E- subjected the petitioner to non-physical abuse which was extreme cruelty that caused the petitioner depression and insomnia. In *Hernandez*, the court held that extreme cruelty can be assessed under objective standards and is a clinical, nondiscretionary determination subject to judicial review. As this case arose outside of the Ninth Circuit, *Hernandez* is not a binding precedent. Furthermore, the Fifth and the Tenth Circuit Courts of Appeals have come to a contrary conclusion. *Wilmore v. Gonzales*, 455 F.3d 524, 527-28 (5th Cir. 2006); *Perales-Cumpean v. Gonzales*, 429 F.3d 977, 982-984 (10th Cir. 2005). Although *Wilmore* and *Perales-Cumpean* concerned applications for cancellation of removal, both courts cited the definition of battery or extreme cruelty for self-petitioners at 8 C.F.R. § 204.2(c)(1)(vi) and found the definition “far from algorithmic” because it “requires consideration of many discretionary factors” and “does not provide a binding, objective standard that would channel the [agency’s] discretion in a manner making it subject to judicial review.” *Perales-Cumpean*, 429 F.3d at 984. *Accord Wilmore*, 455 F.3d at 527-28. Thus, the Fifth Circuit, within whose jurisdiction this case arose, held that a determination of spousal abuse is discretionary and therefore not subject to judicial review. *Id.*

Even if *Hernandez* were binding on this case, the relevant evidence fails to establish that S-E- subjected the petitioner to extreme cruelty under the clinical and legal standards cited by the Ninth Circuit. The actions of S-E- and her family, as described by the petitioner, are not comparable to the level of violence that *Hernandez* was subjected to.

Counsel asserts that the director failed to discuss S-E-’s physical and emotional abuse towards the petitioner. In adjudicating the petition the director acknowledged that S-E- had mental disorders, which affected her behavior, but the director concluded that the relevant evidence did not establish that S-E- acted with the intent to “achieve compliance or gain control” over the petitioner. Counsel argues that the Act requires only that the petitioner establish that he was battered or subjected to extreme cruelty during his marriage, and that the director erred in requiring that S-E- act with the intent to achieve compliance or gain control in order to establish extreme cruelty. The determination of what evidence is credible and the weight accorded such evidence lies within the sole discretion of U.S. Immigration and Citizenship Services. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). In this case, the record shows that the director considered all the relevant evidence. The director’s comment did not impose an additional requirement or a heightened standard of proof and we find no error in her determination. Congress’s intent in allowing a showing of either battery or extreme cruelty was to protect survivors of domestic violence. *See H.R. Rep. No. 103-395*, at 37-38. In this case, the preponderance of the relevant evidence does not demonstrate that the petitioner’s former wife subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Beyond the director's decision, the petitioner has also failed to establish a qualifying spousal relationship with his former wife. The divorce decree in the record reflects that the petitioner divorced his wife on October 19, 2009. 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). The petitioner has not demonstrated the requisite battery or extreme cruelty and the connection between his divorce and such battery or extreme cruelty. Accordingly, the petitioner has not demonstrated that he had a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. He has not demonstrated that he entered into marriage with his wife in good faith, and that she subjected him to battery or extreme cruelty during their marriage. Beyond the director's decision, he has also not established that he had a qualifying spousal relationship with her, and was eligible for immediate relative classification based on that relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on all four of these grounds.

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); *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.