

(b)(6)



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **DEC 19 2013**

Office: VERMONT SERVICE CENTER

File: [Redacted]

IN RE: Petitioner: [Redacted]

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:

[Redacted]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 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 entered into marriage with his United States citizen spouse in good faith, and that she subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner provided a timely appeal.

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 immigrant classification as an abused spouse under 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(1), which states the following:

(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:

(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 [REDACTED] who entered the United States as a visitor on March 6, 1999. The petitioner married A-H-, a U.S. citizen, on March 25, 2005.¹ The petitioner and A-H- divorced on March 26, 2008. The petitioner filed the instant Form I-360 on March 24, 2010. The director subsequently issued a Request for Evidence (RFE) of, among other things, evidence of a qualifying relationship and the requisite battery or extreme cruelty. The petitioner responded with additional

¹ Name withheld to protect the individual's identity.

evidence which the director found insufficient. The director denied the petition, and the petitioner 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 fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the director's grounds for denial.

Entry into the Marriage in Good Faith

De novo review of the relevant evidence submitted below fails to demonstrate that the petitioner married his former spouse in good faith. The relevant evidence in the record consists of a personal statement from the petitioner; copies of photographs, an income tax return, invoices, automobile insurance records, Sam's Club membership cards, a letter from [REDACTED] and bank records; and affidavits from the petitioner's friends [REDACTED] and [REDACTED].

The petitioner briefly stated in his personal statement that he met A-H- at a restaurant in June 2004 and they began dating two months later. The petitioner asserted that eight months later the petitioner proposed to A-H- and they wed on March 25, 2005 at a notary's office. The petitioner did not describe in further detail how he met A-H-; their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

The affidavits from the petitioner's friends [REDACTED] and [REDACTED] mention having visits and attending social engagements with the petitioner and his former wife, but they do not discuss any particular occasion in detail, or recount in any detail their observations of interactions between the petitioner and A-H-, or otherwise demonstrate their personal knowledge of the petitioner's relationship with his former wife.

The photographs submitted into the record show only that the petitioner and A-H- were pictured together at their wedding, but the photographs provide no probative information of the petitioner's intentions in marrying his former wife.

The record contains a copy of a dental invoice in the name of the petitioner and an invoice in the name of the petitioner's former wife; however, the invoices do not show the same address. The copies of the membership cards, the joint tax return, furniture and telecommunication invoices, automobile insurance records, and bank statements show the names of the petitioner and A-H-, but the joint tax return is self-prepared and unaudited, and is not accompanied by any evidence that it was actually filed with the Internal Revenue Service (IRS). While bank account statements reflect regular account activity, this is not sufficient to show that the petitioner and his former wife used the account for shared savings or expenses because the account was closed after three months. The letter from [REDACTED] indicates that the petitioner and A-H- make payments on cookware and the remaining documents show that the petitioner and his former wife shared a residence during their marriage, but these documents do not establish the petitioner's marital intentions. Without any probative account from the petitioner or his friends regarding the petitioner's entry into the marriage, documents that reflect a joint address and a purchase are not sufficient to establish the petitioner's good faith in marrying his former wife. The petitioner only briefly described how he met his former wife, his

courtship and wedding, and their shared experiences, apart from the alleged abuse. His friends do not describe how the petitioner first met his former wife, and do not mention in any detail their observations of interactions between the petitioner and A-H-.

In this case, when viewed in the totality, 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.

On appeal, counsel argues that the director erred by not considering evidence of the Sam's Club membership cards and the letter from [REDACTED]. The determination of what evidence is credible and the weight to be given that evidence lies within the sole discretion of U.S. Citizenship and Immigration 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)(i). Even though these documents were not mentioned in the director's decision, the director did not err in his determination that the petitioner failed to demonstrate that he married his former wife in good faith. The petitioner did not mention in any detail how he first met his former wife; their courtship, wedding, joint residence or any of their shared experiences, apart from the claimed abuse. The petitioner's friends also do not discuss in any probative detail visits or functions with the petitioner and A-H-, or their observations of the petitioner and A-H-. Without probative accounts from the petitioner and his friends of the petitioner's relationship with his former wife, the evidence in the record is not sufficient to show the petitioner's good faith in marrying A-H-.

Battery or Extreme Cruelty

De novo review of the relevant evidence submitted below fails to demonstrate that the petitioner's former wife subjected him to battery or extreme cruelty during their marriage. The relevant evidence in the record consists of a personal statement from the petitioner, a notice of filing a comprehensive behavioral health assessment, a comprehensive behavioral health assessment of A-H-'s daughter, a letter from [REDACTED] and declarations from the petitioner's employer [REDACTED] and the petitioner's friends [REDACTED] and [REDACTED].

The petitioner recounted in his personal statement that A-H- had been verbally and physically aggressive to the petitioner at a couple dinner events as well as after seeing a quitclaim deed from the petitioner to his first wife. The petitioner also indicated that A-H- reacted hostilely when the petitioner denied A-H-'s accusation that the petitioner had been unfaithful. The petitioner declared that he was devastated that A-H- gave birth to a child that was not his. He stated that A-H- stole his belongings to buy illegal drugs, and in October 2007 she was reported to the Department of Children and Families for leaving her two children with a babysitter. The petitioner indicated that he has not seen the children or A-H- since their divorce on March 26, 2008. While the petitioner asserted in his personal statement that A-H- slapped and punched him, his description of the events does not contain the probative details necessary to conclude that these incidents actually occurred. Overall, the evidence does not demonstrate that A-H- ever battered the petitioner or either of his stepchildren, subjected him or either of his stepchildren to psychological abuse, or establish that A-H-'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).

Also, the notice of filing of a comprehensive behavioral health assessment, the comprehensive behavioral health assessment, and the letter from [REDACTED] with Child Protective Investigations Division dated [REDACTED] do not indicate that A-H- ever battered or subjected either of the petitioner's stepchildren to extreme cruelty. Moreover, the letter stated that the investigation regarding the children was closed.

The petitioner's friends [REDACTED] and [REDACTED] describe in their declarations witnessing the two incidents where A-H- reacted aggressively to the petitioner, when the petitioner tried to stop A-H- from leaving their house, and when the petitioner tried to calm his former wife after she demanded that the petitioner's guests leave the house. Similar to the petitioner's statement, however, their descriptions of the events lack detail. The petitioner's employer [REDACTED] indicated that he once witnessed A-H- react aggressively when the petitioner refused to give her money. Taken as a whole, the statements are not probative in establishing that A-H- ever battered the petitioner or either of his stepchildren, or subjected her former husband or either of his stepchildren to conduct that amounted to extreme cruelty. The preponderance of the relevant evidence does not demonstrate that the actions of the petitioner's former wife constituted battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi), and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

On appeal, counsel asserts that the evidence in the record demonstrates that the A-H- subjected the petitioner to emotional and physical abuse during their marriage. Counsel declares that A-H- manipulated and belittled the petitioner, was physically aggressive to the petitioner, demanded money from the petitioner, stole from the petitioner to buy illegal drugs, and was reported to Child Protective Services. 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). We find no error in the director's determination that the relevant evidence of the petitioner's personal statement, declarations from the petitioner's friends and employer, and the documents regarding the petitioner's children were insufficient to demonstrate that A-H-'s actions constituted battery or extreme cruelty to the petitioner or either of his stepchildren.

Counsel asserts that the director erred by not issuing a Notice of Intent to Deny (NOID) the Form I-360 self-petition. The former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (2006) provided that a NOID was required before the denial of a Form I-360 self-petition. However, that regulation applies only to a Form I-360 self-petition filed before June 2007. As the instant Form I-360 was filed on March 21, 2010, under current regulations the director was not required to issue a NOID in this case.

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 United States citizen spouse in good faith and that she subjected him to battery or extreme cruelty during their marriage. 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 Otiende*, 26 I&N

(b)(6)

NON-PRECEDENT DECISION

Page 7

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.