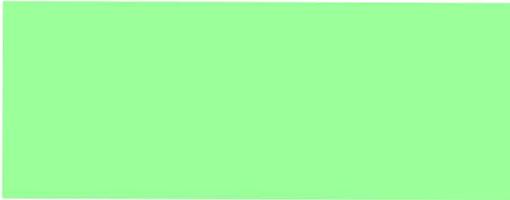




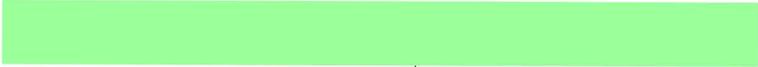
U.S. Citizenship
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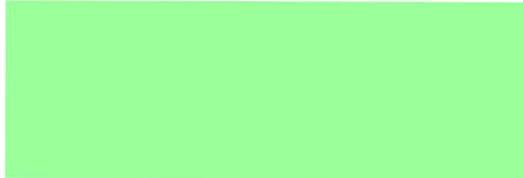
Date: **FEB 20 2013**

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 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 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 on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. The director also denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith and for failure to demonstrate that he is exempt from the bar to approval of his petition under section 204(g) of the Act.

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 record in this case indicates that the petitioner was in removal proceedings at the time of his marriage. In such a situation, section 204(g) of the Act prescribes:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien’s right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after his marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, which states in pertinent part:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. —

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

8 U.S.C. § 1255(e) (emphasis added).

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:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of . . . section 204(g) of the Act

* * *

(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.

(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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Canada who entered the United States as an H-1B nonimmigrant on July 30, 2004. He married K-G¹, a U.S. citizen, on September 21, 2009 in Las Vegas, Nevada. The petitioner filed the instant Form I-360 on October 15, 2010. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty and entry into marriage with K-G- 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 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. Beyond the director's decision, the petitioner has also not established that he is a person of good moral character or eligible for immediate relative classification.² The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. The petitioner did not file a personal affidavit regarding battery or extreme cruelty with his original

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).

submission. He submitted one police incident report dated February 17, 2010 indicating that the petitioner and K-G- were involved in a domestic dispute which resulted in the Las Vegas police being called to their residence. No charges were filed against the petitioner or K-G- and the case was closed for insufficient evidence. The director correctly reviewed the police report and determined that it did not provide probative information regarding any specific incident of abuse to establish that K-G- subjected the petitioner to battery or extreme cruelty. The petitioner also submitted two letters addressed to K-G- regarding two outstanding accounts. These letters demonstrate that K-G- was in debt but do not establish that she subjected the petitioner to battery or extreme cruelty.

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 his affidavit submitted in response to the RFE, the petitioner stated that the problems with K-G- began because of her financial difficulties which he claimed to be unaware of until after their marriage. The petitioner stated that K-G- was also unhappy at work and began to reflect her anger and anxiety back at him. He stated that he suspected that she married him so hastily because she needed his money. The petitioner stated that by December, K-G- was in such emotional distress that he canceled a planned holiday visit by his children. He stated that this upset K-G- who then called his children to chastise them. The petitioner stated that after the holidays, K-G- became more verbally aggressive and on one occasion he called the police because he was afraid of her violent anger. He stated that he became depressed as a result of her mental cruelty. He stated that he decided to leave when her behavior became more erratic. The petitioner, in support of his Form I-360, also submitted a copy of a premarital agreement dated September 21, 2009 that was signed by both him and K-G-. Attached to the agreement were two addendums, each signed by both the petitioner and K-G-, that listed their assets and liabilities. The addendum pertaining to K-G-'s financial situation showed that K-G- had \$50,000 of credit card debt and a net worth of \$-13,000. In his affidavit, the petitioner did not explain how he was unaware of K-G-'s financial troubles when their marital agreement, which was signed and dated on the same day that they were married, clearly demonstrated that she was in considerable debt. 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).

The petitioner also submitted affidavits from his children, [REDACTED] and [REDACTED], and friend, [REDACTED]. The petitioner's son, [REDACTED] stated that he was 20 years-old and indicated that he did not reside with the petitioner, but in December of 2009, he received harassing telephone calls and electronic mail messages from K-G- who was angry that he was not going to travel to Las Vegas for the holidays. He further stated that he noticed his father becoming more depressed. The petitioner's daughter, [REDACTED] stated that she was 18 years-old and indicated that she also did not reside with the petitioner, but reported that K-G- left disturbing voicemails on her telephone and that the petitioner and K-G- broke up because of K-G-'s anger issues. Neither of the petitioner's children recounted whether they witnessed any specific incidents of abuse or otherwise established their knowledge of such abuse. [REDACTED] stated that she

witnessed K-G- have breakdowns and that the petitioner confided in [REDACTED] that he feared for his safety. She did not provide probative information regarding any specific incidents of abuse and the director was correct in finding these letters insufficient to demonstrate that K-G- ever subjected the petitioner or either of his children to battery or extreme cruelty.

On appeal, the petitioner submits a second affidavit, a letter from friend [REDACTED] and a psychological evaluation from [REDACTED]. In his affidavit, the petitioner describes his emotional reaction after undergoing his psychological evaluation but he does not provide additional probative information to establish that K-G- inflicted extreme cruelty upon him. [REDACTED] states that he is a friend of the petitioner and that the petitioner confided in him regarding K-G-'s abusive behavior. He states that the petitioner was concerned about K-G-'s behavior and that in May of 2010, the petitioner asked to stay at his home temporarily after leaving K-G-. [REDACTED] further states that he acted as a bodyguard for the petitioner when the petitioner went back to his shared residence with K-G- to collect his belongings. [REDACTED] does not describe whether he witnessed specific incidents of abuse or otherwise establish his knowledge of such abuse. The psychological evaluation from [REDACTED] also fails to provide any additional information regarding the claimed abuse. [REDACTED] states that the petitioner's symptoms are largely consistent with Battered Person Syndrome and Posttraumatic Stress Disorder. However, the evaluation does not provide any probative details regarding any abuse or extreme cruelty inflicted by K-G- upon the petitioner. While we do not question [REDACTED] professional expertise, his assessment conveys the petitioner's statements during his interviews with him, and provides no further, substantive information regarding the claimed abuse. When viewed in the aggregate, the relevant evidence submitted below and on appeal is insufficient to establish that K-G- subjected the petitioner or either of his children to 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.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner failed to establish that he married K-G- in good faith. The record contains the petitioner's affidavit, a premarital agreement, photographs of the wedding day and of one other occasion, a jointly addressed pool repair invoice, two utility bills from [REDACTED] and [REDACTED], letters from [REDACTED] and [REDACTED] and affidavits from his children and his friend. The invoice, the bills, and the bank letters addressed to the petitioner and K-G- demonstrate a shared residence but do not establish that the petitioner married K-G- in good faith. The photographs show that the petitioner and K-G- were photographed together at their wedding and on one other occasion but are also insufficient to establish that the petitioner married K-G- in good faith. The pre-marital agreement likewise carries little evidentiary weight to establish the petitioner's good-faith marital intentions.

In his affidavit, the petitioner stated that he met K-G- through an Internet dating service during the summer of 2008. He stated that they hit it off and began dating exclusively but broke up when he had to relocate to Miami, Florida for business. He stated they remained friends and when his business venture failed, he returned to Las Vegas to visit K-G- who then proposed marriage. The petitioner stated that within three weeks of his return to Las Vegas, he and K-G- were married. He did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart

from the alleged abuse. The affidavits from his children and his friend submitted below also did not contain probative details regarding the petitioner's intentions in marrying K-G-. His children attested to knowing that the petitioner and K-G- were serious about each other but they did not describe any visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship. [REDACTED] the petitioner and K-G-'s friend, attested to witnessing the start, progression and end of their relationship but failed to provide probative information regarding the petitioner's marital intentions.

On appeal, the petitioner submits additional statements explaining why he could not submit additional joint documents with K-G-. However, the petitioner did not provide any substantive details regarding his relationship with K-G- and his intentions upon marrying her. Instead, the petitioner spoke mainly to the claimed abuse. He also submits a letter from his friend, [REDACTED] who states that he met K-G- at two social events, describing her and the petitioner as happy and affectionate. He does not recount any particular visit or social occasion in probative detail or otherwise provide detailed information establishing his personal knowledge of the relationship.

Regardless of the deficiencies of the record, 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). On appeal, counsel claims that there is no evidence to suggest that this marriage was entered into for any reason other than good faith. However, the record fails to reflect this assertion. Counsel erroneously argues that the petitioner's testimony and the testimony of his friends and family sufficiently show that the petitioner married K-G- in good faith. The petitioner's affidavits were brief and did not provide sufficient detail to adequately address his good-faith intent upon marrying K-G-. The letters from his family and friends also failed to provide relevant, substantive information and did not show that the authors had any 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 wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

Because the petitioner married K-G- while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). See also *Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard.") To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his good-faith entry into the qualifying relationship by a preponderance of the evidence

and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner failed to establish his good-faith entry into his marriage with K-G- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

Beyond the director's decision, the petitioner is also not eligible for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv) because he has not complied with, nor is he exempt from section 204(g) of the Act.

Good Moral Character

Beyond the director's decision, 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 attest to his good moral character in his affidavit submitted below. The petitioner submitted a state issued criminal background check from the [REDACTED] based on a name and date of birth search showing that he had not been arrested in Las Vegas, Nevada. The petitioner also submitted a fingerprint check from the Nevada Department of Public Safety verifying that the petitioner has not been convicted of a crime in Nevada. A review of the administrative record shows that the petitioner resided in California from January of 2003 to June 2008. The petitioner failed to submit a local police clearance or state issued criminal background check from California. A review of the administrative record also reveals that on July 8, 2008, the petitioner was arrested by the [REDACTED] California and convicted of reckless driving. The petitioner did not submit any documents relating to this conviction nor provide any information surrounding the details of the arrest. The petitioner's affidavit and the Las Vegas and Nevada police clearance reports are 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.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. He has not established that K-G- subjected him or either of his children to battery or extreme cruelty during their marriage.

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Further, he has not demonstrated that he entered into marriage with his wife in good faith and that he is exempt from the bar to approval of his petition under section 204(g) of the Act. Beyond the director's decision, the record also fails to demonstrate that the petitioner is eligible for immediate relative classification based on their marriage and that he is a person of good moral character. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these five 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 Chawathe*, 25 I&N at 375. 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.