



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **JAN 09 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)

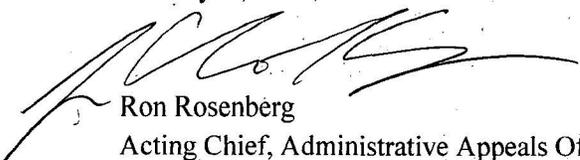
ON BEHALF OF PETITIONER:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 Director, Vermont Service Center (“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 United States citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his U.S. citizen wife in good faith and for failure to establish that the petitioner was subjected to battery or extreme cruelty by her during their marriage.

On appeal, the petitioner, through counsel, submits a brief.

*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 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 . . . 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.

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(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 Israel who entered the United States on September 30, 2006 as a visitor. The petitioner married [REDACTED]<sup>1</sup>, a U.S. citizen, in Kew Gardens, New York on March 24,

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<sup>1</sup> Name withheld to protect the individual's identity.

2009. The petitioner filed the instant Form I-360 on October 26, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty by [REDACTED] against him and of his good-faith entry into marriage with S-M-. 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.

On appeal, counsel asserts that the petitioner established through detailed testimonies that S-M- subjected the petitioner to mental cruelty. Counsel further asserts that the petitioner's marital intent was already adjudicated by the U.S. Citizenship and Immigration Services (USCIS) during the interview on the immigrant visa petition filed by S-M- on the petitioner's behalf.

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 and 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 brief submitted on appeal fails to overcome this ground for denial. The petitioner did not initially submit evidence to establish that he was subjected to battery or extreme cruelty by [REDACTED]. In response to the RFE, the petitioner submitted a self-affidavit, a psychological evaluation report from [REDACTED] Ph.D., and affidavits from friends [REDACTED]. In his affidavit, the petitioner stated that he still loves his wife, but that after a brief reconciliation at the end of 2010, [REDACTED] "had a fit of rage during which she was crying and laughing" at the same time and told him she would not file an immigrant visa petition for him again. He stated that she then left him again and that he was devastated by her abandonment and embarrassed by her extramarital affair. The petitioner's statements do not 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 psychological evaluation from Dr. [REDACTED] did not provide additional evidence regarding the claimed abuse. Dr. [REDACTED] stated that the petitioner suffered from severe depression due to the cruelty inflicted upon him by his estranged wife. While we do not question Dr. [REDACTED]'s professional expertise, her assessment conveys the petitioner's statements during her interviews with him, but it provides no further, substantive information regarding the claimed abuse and is insufficient to demonstrate that the petitioner's mental health condition is attributable to his wife's battery or extreme cruelty rather than to her infidelity, abandonment and the resultant breakdown of their marriage.

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). The petitioner submitted letters from [REDACTED] stated that he is a good friend of the petitioner and also knew [REDACTED]. He stated that he was surprised

that the petitioner married [REDACTED] because she was a very controlling woman. He also stated that [REDACTED] destroyed the petitioner's prior marriage to a very decent woman which caused the petitioner's immigration problems. [REDACTED] stated that [REDACTED] could be sweet and charming but would throw things and break dishes when she got mad. [REDACTED] and [REDACTED] also stated that [REDACTED] caused immigration problems for the petitioner and humiliated him in front of his friends. Neither [REDACTED] nor [REDACTED] indicated that they witnessed any specific incidents of battery or extreme cruelty or otherwise established their knowledge of such abuse.

On appeal, counsel incorrectly asserts that the testimony provided illustrated that [REDACTED] behavior amounted to mental cruelty. The petitioner's testimony and the relevant statements submitted on his behalf were not probative of any physically violent or extremely cruel behavior by [REDACTED]. When viewed in the aggregate, the remaining, 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 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.

*Entry into the Marriage in Good Faith*

The director also correctly determined that the petitioner failed to establish that he married [REDACTED] in good faith. The record contains the petitioner's affidavit, copies of joint bank statements, airline ticket information, a copy of a vehicle lessor certification, photographs of the wedding and of various other occasions, affidavits from friends [REDACTED] and an affidavit from his mother-in-law [REDACTED]. In his affidavit, the petitioner stated that he loves [REDACTED] but did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. Likewise, the affidavits of the petitioner's friends submitted below did not contain probative information regarding the petitioner's intentions in marrying [REDACTED]. The petitioner's friends all attested to knowing the petitioner and his wife as a married couple, but they did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship. [REDACTED] briefly stated that the petitioner is a wonderful addition to the family but did not provide probative information regarding the petitioner's marital intentions. The director correctly determined that the airline ticket information indicates joint travel but does not establish the petitioner's good-faith intent upon marrying [REDACTED]. Additionally, the bank account statements, although showing that the account was jointly held, show minimal activity and do not establish that the account was used for shared financial transactions. The photographs and the lessor certification alone are insufficient to establish that the petitioner married [REDACTED] 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). In this case, the petitioner's statements do not provide sufficient information of his relationship with [REDACTED]. The petitioner does not describe how they met, their courtship, wedding, marital residence or

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any of their shared experiences, apart from the claimed abuse. His testimony is insufficient to establish his intentions upon marrying [REDACTED]. 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*

On appeal, the petitioner has failed to establish that S-M- subjected him to battery or extreme cruelty during their marriage and that he married her in good faith. 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 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.