**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: JAN 2 4 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 Vermont Service Center, ("the director"), denied the immigrant visa petition and affirmed its decision upon granting a subsequent motion to reopen and reconsider. 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 a United States citizen.

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

On appeal, the petitioner, through counsel, submits a brief statement on the Form I-290B, Notice of Appeal or Motion.

*Applicable Law*

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 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, 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

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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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Ghana who entered the United States as a B-2 visitor on May 5, 2004

He married [redacted][1], a U.S. citizen, on July 23, 2007. The petitioner filed the instant Form I-360 on June 26, 2009. After issuing a request for additional evidence (RFE), the director denied the petition for failure to establish that the petitioner entered into marriage with [redacted] in good faith and that he was subjected to the requisite battery or extreme cruelty by [redacted]. The director affirmed his decision after granting the petitioner's motion to reopen and reconsider. The petitioner timely filed an appeal.

The AAO conducts appellate review on a *de novo* basis. *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 statement submitted on appeal fails to overcome this ground for denial. The petitioner filed a self-affidavit with his original submission. In response to the RFE, the petitioner submitted a second self-affidavit, an affidavit from his pastor, [redacted], and an affidavit from his cousin, [redacted] With his motion, the petitioner submitted a third self-affidavit and affidavits from friends [redacted]

In his first affidavit, the petitioner stated that [redacted] moved in with him a week after they met and that during arguments on two occasions, [redacted] broke some of his personal property. He then stated that after they got married in July of 2007, they were very happy. In September of 2007, the petitioner stated that he and [redacted] attended a picnic during which [redacted] began harassing him in front of his friends. He stated that [redacted] poured beer on him, went back to their apartment, and threw all of his clothes outside. The petitioner further recounted an incident when [redacted] became angry with him and cut up his clothes with a pair of scissors. He stated that he also discovered she was having an affair and wanted to get divorced but he could not afford to. The petitioner stated that [redacted] repeatedly stole from him and threatened him with deportation. She moved out at the end of April 2009 after an incident where she threw water on him. In the petitioner's second affidavit, he repeated much of his earlier statements and stated that his problems with [redacted] culminated when he was forced to call the police on April 13, 2009 after an argument. In his third affidavit, the petitioner again repeated much of his earlier statements. The petitioner's statements did 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 petitioner's family and friends attested to his troubled marriage, but their statements failed to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. [redacted] stated that as his pastor, the petitioner told her when things were not going well in his marriage. [redacted] stated that she knew there were times when [redacted] could be aggressive but did not indicate that she observed any specific incidents of abuse or the effects of the abuse on the petitioner. The petitioner's cousin, [redacted] stated that he witnessed [redacted] pour beer on the

[1] Name withheld to protect the individual's identity.

petitioner during an argument and that the petitioner told him of other abusive incidents. However, his statements provided no further probative, detailed accounts of battery or extreme cruelty inflicted by - upon the petitioner. stated that he lived in the basement of the house where the petitioner resided with and attested to the deterioration of their marriage. He recounted that she was verbally abusive towards the petitioner and cut up his clothes on one occasion but he did not provide any probative details regarding this or any other incident. stated that the petitioner told her about the abuse he was suffering at the hands of but admitted that she never personally witnessed any of the claimed abuse and she did not describe any contemporaneous observations of the effects of any spousal abuse on the petitioner.

On appeal, counsel argues that the petitioner is currently incarcerated, that it has been difficult to obtain further evidence, and that the affidavits already submitted provided sufficient information regarding the requisite battery and 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, "Other forms of credible relevant evidence will also be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this case, the petitioner's affidavits and the affidavits from his family and friends do not contain sufficient, probative information to establish the claimed abuse. When viewed in the aggregate, the relevant evidence in the record is insufficient to establish that 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.

*Good-Faith Entry into Marriage*

The director correctly determined that the petitioner failed to establish that he married n good faith. The relevant evidence in the record contains three affidavits from the petitioner, copies of the petitioner and 's 2007 and 2008 federal income tax returns showing their filing status as married filing jointly, a T-Mobile cellular telephone bill issued only under the petitioner's name, and affidavits from family and friends. The director properly reviewed the record and found that the evidence did not satisfactorily demonstrate the petitioner's qualification under the good-faith marriage requirement. The T-Mobile statement is solely addressed to the petitioner and does not demonstrate that the account was used by both parties. Further, it is dated just before left the petitioner and is insufficient to establish the petitioner's intentions upon marrying The tax returns alone fail to establish by a preponderance of the evidence the petitioner's good-faith intentions entering into marriage.

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 affidavits do not provide sufficient detail to adequately address his good faith intent upon

marrying In his first affidavit, the petitioner stated that he met while walking on the street near his home. He stated that he gave her his number and then his address when she called him later that same day. He stated that he liked her right away and agreed when asked to move in with him a week later. He stated that he supported her financially and that they were happily married on July 23, 2007. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. In his second affidavit, the petitioner stated that prior to their move to another address, he had "pleasant interactions" with He did not provide any other probative details about their relationship apart from the claimed abuse. In his third affidavit, the petitioner explained why he was unable to submit additional documentation regarding his good-faith intentions upon marrying but again failed to provide any information regarding their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse.

The letters of the petitioner's friends and family also did not contain probative information regarding the petitioner's intentions in marrying . In his first affidavit, stated that the petitioner and were a normal, loving couple and that embraced the Ghanaian culture. In his second affidavit, he stated that he knew the petitioner and had a genuine marriage because of their love for one another. stated that the petitioner and attended church together and that everyone at the church knew them as a married couple. stated that the petitioner and resided together and did everything together. stated that during the time she saw the petitioner and together, she observed them to have a genuine marriage. She stated that in her opinion, the petitioner and had a passionate relationship. None of the affiants described any particular visit or social occasion in probative detail or otherwise provided substantive information establishing their personal knowledge of the relationship. The petitioner did not submit any additional evidence demonstrating his good-faith intent upon marrying in the instant appeal. 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*

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. The appeal will be dismissed.

**ORDER**: The appeal will be dismissed.