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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

Date: **JUL 17 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:

SELF-REPRESENTED

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
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 for failure to establish a that he is eligible for immediate relative classification, that he resided with his U.S. citizen wife, that he entered into marriage with her in good faith, and that she subjected him to battery or extreme cruelty during their marriage. The director also denied the petition for failure to demonstrate that he is exempt from the bar to approval of his petition under section 204(g) of the Act.

On appeal, the petitioner submits a statement and additional 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).

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 . . .

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 Cameroon who claimed he entered the United States on April 23, 2003 as a B-2 visitor. He married I-M-¹, a U.S. citizen, on February 23, 2009 in Orlando, Florida. The petitioner filed the instant Form I-360 on December 28, 2010. The director subsequently issued a Request for Evidence (RFE) and Notice of Intent to Deny (NOID) the petition for lack of evidence of, *inter alia*, the requisite battery or extreme cruelty and entry into marriage with I-M- 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. The appeal will be dismissed for the following reasons.

Joint Residence

The record fails to demonstrate that the petitioner resided with I-M-. The petitioner stated on his Form I-360 that he resided with I-M- from August of 2007 to August of 2009 in Florida. The relevant evidence on the record contains the following: the petitioner's affidavit; the petitioner's letter dated June 28, 2010; an undated letter from the petitioner; multiple telephone and utility bills; a copy of their lease; and affidavits from the petitioner's family and a friends. Many of the telephone and utility bills, though jointly addressed, are dated in 2011 and 2012, more than a year or two after the petitioner stated that he separated from I-M-. One of the joint telephone statements shows I-M- on the account and using the petitioner's last name. However, the statement is dated approximately five months before the two were married. As such, little evidentiary weight is given to these bills and the remaining statements are insufficient to establish that the two shared a marital residence. Likewise the lease is dated after the petitioner and I-M- were separated and also failed to establish that the two resided together.

¹ Name withheld to protect the individual's identity.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). In his affidavit, the petitioner did not describe his shared residence with I-M- in any probative detail apart from the claimed abuse. He did not, for example, describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with I-M- after their marriage. He also did not indicate when he separated from I-M-. In his letter dated June 28, 2010, the petitioner stated that he married I-M- about two years after they started dating and had been married for almost two years. He stated that they lived together "for the whole time." He did not give specific dates when the two resided together after they were married.

Additionally, the letters from the petitioner's friends did not provide probative details regarding the marital residence to overcome the lack of traditional forms of joint documentation. The petitioner submitted letters from [REDACTED] who claimed to know that the petitioner married I-M- and resided with her in 2009 but they did not contain probative information about their shared residence or describe any particular visit in detail. On appeal, the petitioner submits another letter explaining that he could not submit additional evidence because he did not file federal income taxes with I-M- nor did they have jointly held bank accounts or insurance policies. He further asserts that he never claimed to live with I-M- prior to their marriage and argues that the director incorrectly determined that the petitioner's account contradicted the information stated in his psychological evaluation. However, the petitioner does not clarify on appeal the actual dates that he resided with I-M- or provide an explanation as to why his psychological evaluation report cites to November of 2011 as the date I-M- left when the petitioner listed August of 2009 on his Form I-360 as when she left. Consequently, the petitioner has not demonstrated that he resided with I-M- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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 his letter and evidence submitted on appeal fail to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavit and letters, a psychological evaluation report from [REDACTED] letters from family and friends, a police record for a telephone call placed by the petitioner on February 18, 2009, and photographs of the claimed abuse.

In his affidavit, the petitioner stated that shortly after their marriage, I-M- started showing him her "evil side." He stated that she would lose her temper quickly and blame everything on him. He stated that she cursed at him, regularly threatened to have him deported and on one occasion, attempted to strangle him when he told her to divorce him if that is what she wanted. The petitioner stated that after I-M- tried to choke him, he called 911 to scare her but hung up without requesting assistance. He recounted that the police came anyway to check on them but he told them that everything was fine. He did not give further probative details about this incident nor did he describe any other specific

incidents of abuse. Additionally, the one specific incident that he described took place prior to their marriage. In his letter dated June 28, 2010, the petitioner again described the incident in February of 2009 but did not add any probative details about the claimed attack or describe any other specific incident of abuse. In an undated letter, the petitioner stated that recently he was stressed over his marriage and called the national domestic violence hotline. He stated that he was referred to [REDACTED] and felt better after speaking with her. [REDACTED] stated that the petitioner told him about the problems the petitioner was having with I-M-. [REDACTED] stated that he knew something was wrong but did not want to get involved. [REDACTED] stated that I-M- acted rudely one time when he was over for dinner and suspected that she was abusive. He recounted that he warned the petitioner about I-M- but the petitioner defended her. [REDACTED] stated that the petitioner told him about the strangling incident and that the police gave I-M- a warning. None of the petitioner's friends described whether they witnessed specific incidents of abuse or otherwise establish their knowledge of such abuse. The petitioner's statements and the statements of his friends 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 [REDACTED] did not provide any additional information regarding the claimed abuse. [REDACTED] indicated that the petitioner had symptoms of depression and anxiety and that it was her professional opinion that the petitioner "suffered great abuse during his domestically violent marriage." However, the evaluation does not provide any probative details regarding any battery or extreme cruelty inflicted by I-M- upon the petitioner. While we do not question [REDACTED] professional expertise, her assessment conveys the petitioner's statements during her interview with him, and provides no further, substantive information regarding the claimed abuse. The photographs submitted by the petitioner also fail to establish that he was battered by I-M- because there is no indication from the photographs alone that the scars resulted from wounds inflicted on him by I-M- as claimed. Further, the call maintenance/inquiry printout shows only that a call was placed to 911 on February 18, 2009. No probative information regarding any claimed abuse was provided on the printout.

On appeal, the petitioner asserts in his letter that his friends all knew about the claimed abuse because they told him about their lives and expected him to do the same. He does not add any probative information about any claimed abuse. He also submits a letter from [REDACTED] licensed clinical social worker and Clinical Director at [REDACTED] and photographs that he labeled and dated. [REDACTED] only states that the petitioner was a client of [REDACTED] and recounts that the petitioner indicated at his initial intake that his wife was physically and verbally abusive. Further, there is no indication that the photographs, with descriptions added by the petitioner, depict scars that resulted from wounds inflicted on him by I-M-. The petitioner's letter and the evidence submitted on appeal fail to overcome the director's grounds for denial. 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 the Marriage

The director further correctly determined that the petitioner failed to establish that he married I-M- in good faith. The relevant evidence on the record contains the petitioner's affidavit, an undated letter from the petitioner, telephone and utility bills, a copy of a lease, photographs of the petitioner and I-M- on their wedding day and on two other unidentified occasions, and affidavits from family and friends. The submitted telephone and utility bills cover a period from October of 2008 to January of 2012. The telephone statement dated October 7, 2008 lists the petitioner and I-M- as account holders with I-M- using the petitioner's last name approximately five months before they were married. Many of the other statements that are jointly addressed to the petitioner and I-M- are dated after the two were separated. As such, these statements have little probative value in demonstrating that the petitioner entered into his marriage in good faith. The lease covers a period after the petitioner claimed the two were separated and therefore failed to establish that the petitioner married I-M- in good faith. The photographs, which showed only that the petitioner and I-M- were pictured together, also did not establish the petitioner's marital intentions.

Nonetheless, 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 statements of the petitioner and his family and friends do not provide sufficient probative information to establish his good-faith intent upon marrying I-M-. In his affidavit, the petitioner stated that he met I-M- on a Greyhound bus in February of 2007 and that the two became friends. He stated that they kept in contact, visited each other, and got engaged in December of 2007. The petitioner recounted that he was detained by Immigrations and Customs Enforcement (ICE) in January of 2008 and released three months later. During this time, he stated that I-M- sent a letter to the Immigration Court on his behalf and that the two married in February of 2009 when he got back on his feet. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. In a subsequent letter, the petitioner stated that I-M- had the pictures of their wedding and that the two were unable to open up a bank account together since he did not have a social security number. He did not add any probative information regarding his good-faith marriage intentions. The affidavits from the petitioner's family and friends did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

On appeal, the petitioner again reiterates why he and I-M- did not have a joint accounts but he does not add any probative details regarding his relationship with I-M- apart from the claimed abuse. The petitioner's letter on appeal and the evidence submitted below do not provide sufficient detail to adequately address his good-faith intent and the letters from his family and friends also failed to provide relevant, substantive information regarding their 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 I-M- 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. On appeal, the petitioner asserts that section 204(g) of the Act does not apply to the instant case because the Immigration Judge terminated proceedings. Section 204(g) of the Act applies until proceedings are terminated. 8 C.F.R. § 245.1(c)(8)(ii)(D). Although the petitioner submits evidence that his removal proceedings were terminated, the proceedings were not terminated until June 27, 2012, after the petitioner and I-M- were separated and none of the other exemptions at 8 C.F.R. § 245.1(c)(8)(iii) apply. The petitioner remains subject to section 204(g) of the Act unless he establishes that his marriage to I-M- was bona fide through clear and convincing evidence.

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. On appeal, the petitioner argues that since his removal proceedings were terminated, Section 204(g) of the Act does not apply. However, the petitioner’s removal proceedings were terminated on June 27, 2012, years after the petitioner married I-M- and therefore he must still qualify for the bona fide marriage exemption. As the petitioner failed to establish his good-faith entry into his marriage with I-M- 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 applicable 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 based on his marriage to I-M-, 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.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. He has not demonstrated that he resided with his wife, entered into marriage with her in good faith, was subjected to battery or extreme cruelty by her during their marriage, and that he is exempt from the bar to approval of his petition under section 204(g) of the Act. He also failed to demonstrate that he is eligible for immediate relative classification based on their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these four grounds.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). 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 and the petition remains denied.