



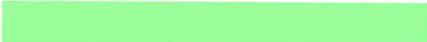
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAR 08 2013**

Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

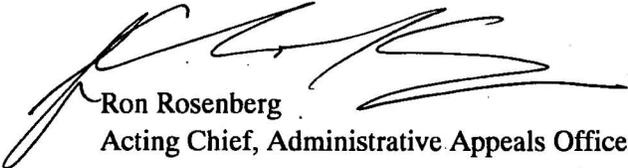
SELF-REPRESENTED

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)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by his lawful permanent resident spouse.

The director denied the petition for failure to establish that the petitioner entered into his marriage in good faith and was subjected to battery or extreme cruelty by his wife during their marriage. On appeal, the petitioner submits additional evidence.

*Relevant Law and Regulations*

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B), 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 . . . lawful permanent resident 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)(B)(ii) of the Act are 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.

\* \* \*

(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 Guyana who claims he entered the United States on October 21, 2005 as a visitor. The petitioner married S-G<sup>1</sup>, a lawful permanent resident of the United States, on May 16, 2011 in Jersey City, New Jersey. The petitioner filed the instant Form I-360 on August 1, 2011.

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

The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage with S-G- and evidence of abuse she inflicted upon him during their marriage. The petitioner, through former counsel, 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.

*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 additional evidence submitted on appeal fails to overcome this ground for denial. The relevant record contains the petitioner's affidavits, a letter from friend [REDACTED], a psychological evaluation prepared by [REDACTED], a New York State licensed psychotherapist, and photographs of the alleged abuse. The director correctly determined that the psychological evaluation letter from [REDACTED], LCAT does not provide any additional evidence regarding the claimed abuse. Ms. [REDACTED] indicated that S-G-'s "limitless urge to gain full possession" over the petitioner has led to a decline in the petitioner's quality of life and psychological well-being. While we do not question Ms. [REDACTED]'s professional expertise, her assessment of the abuse is based on her interview of the petitioner, and it provides no further, substantive information regarding the claimed abuse. The addendum submitted in response to the RFE quoted what the petitioner stated during the session but does not provide probative details regarding any abuse or extreme cruelty inflicted by S-G- upon the petitioner. The photographs of the petitioner's ripped shirt and bleached clothes also fail to establish that the petitioner was battered by S-G-. There is no indication from the photographs alone that S-G- was responsible for the damaged clothes and therefore they carry little evidentiary weight.

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 first affidavit, the petitioner stated that S-G-'s mood towards him started to change in March of 2011. He stated that S-G- was moody, angry, and would frequently ignore him. He stated that she would get angry at him if he tried to discipline her sons, was very controlling with their money, and threatened him regularly with deportation. The petitioner also stated that S-G- threw objects at him when they fought and on one occasion, S-G- poured bleach on his clothes. He does not describe this incident further nor does he provide probative details regarding other specific incidents of the alleged abuse. In his second affidavit, the petitioner stated that S-G-'s behavior toward him changed after her father died in December of 2010. He recounted several occasions where S-G- screamed at him, hit him, or threw soda at him during arguments. He does not provide additional, probative information regarding these specific incidents of the alleged abuse. He stated that after their civil marriage on May 16, 2011, S-G- became more demanding and possessive. The petitioner's statements do not demonstrate that his wife's 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 letter from [REDACTED] attested to the petitioner's troubled marriage but his statements also failed to demonstrate that the petitioner was subjected to battery or extreme cruelty by S-G- during their marriage. He stated that in February of 2011, he picked up the petitioner who had been locked out of the house by S-G-. Mr. [REDACTED] stated that he pleaded with S-G- to open the door but that she refused. Mr. [REDACTED] did not give further probative details about this incident or any other specific incidents of abuse.

On appeal, the petitioner submits a third affidavit and letters from friends [REDACTED]. The petitioner repeats his earlier statements and adds that S-G- continues to threaten to have him deported. He does not provide probative details regarding any specific instances of abuse. Ms. [REDACTED] describes witnessing S-G- scream at the petitioner because he tried to discipline her sons but does not describe the incident in further detail. Mr. [REDACTED] states that during a visit with the petitioner, S-G- was rude to both him and the petitioner. Her behavior as described, however, does not constitute battery or extreme cruelty. Ms. [REDACTED] states that she witnessed S-G- grab the petitioner's shirt and scream at him in front of friends and family at a party but did not provide further probative information about this or any other particular incident of abuse. On appeal, the petitioner's evidence is insufficient to demonstrate that any specific behaviors of the petitioner's wife constituted battery or extreme cruelty. When viewed in the aggregate, the remaining, relevant evidence in the record is insufficient to establish that S-G- 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)(B)(ii)(I)(bb) of the Act.

*Entry into the Marriage in Good Faith*

The director determined that the petitioner failed to establish that he married S-G- in good faith. The petitioner initially submitted a self-affidavit, photographs of their Muslim wedding celebration and other occasions, a copy of the petitioner and S-G-'s lease, and letters from family and friends. In his first affidavit, the petitioner stated that he met S-G- in October of 2007 at a pharmacy where S-G- worked. He stated that they began dating and found that they had a lot in common since they are both originally from Guyana. He then stated that they were married in a religious ceremony in July of 2008 and had a smaller, civil marriage ceremony on May 16, 2011. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. The letters of the petitioner's family and friends attested to knowing the petitioner and S-G- as a couple but did not provide detailed information establishing their personal knowledge of the relationship or the petitioner's marital intentions. The photographs showed that the petitioner and S-G- were photographed together but were insufficient to establish that the petitioner married S-G- in good faith. Likewise, the lease showed that the petitioner and S-G- resided together but did not speak to the petitioner's marital intentions.

In response to the RFE, the petitioner submitted a second affidavit, copies of joint bank statements, copy of a joint lease, copies of joint utility bills, a copy of the 2011 federal income tax return showing filing status as married filing jointly, and copies of airline ticket stubs. The bank statements showed that the accounts were jointly held but showed minimal activity and did not

demonstrate that the accounts were used by both parties. The lease and the utility bills showed that the petitioner and S-G- resided together but did not speak to the petitioner's good-faith intentions upon marrying S-G-. The 2011 federal income tax return was signed and dated but there was no indication that it was filed. The airline ticket stubs showed that the two traveled together but did not establish the petitioner's good faith marital intentions.

In his second affidavit, the petitioner corrected certain dates regarding his courtship and marriage with S-G-. He described in probative detail meeting S-G- at the pharmacy and commencing their courtship, which he recounted in substantive detail. He further recounted meeting her sons, visiting them frequently, and explained how his feelings for S-G- deepened and evolved into wanting to marry her. He described their engagement, wedding ceremony and their shared experiences early in their marriage. The petitioner provided a detailed, credible and probative account of how he met S-G- and began their relationship.

On appeal, the petitioner submits a third self-affidavit, a letter from [REDACTED] with a copy of the lease, and letters from friends [REDACTED] and [REDACTED] who attest to knowing the petitioner and S-G- as a married couple. The petitioner also submits additional joint bank statements, rent receipts, and a tax transcript from the Internal Revenue Service (IRS) showing their 2011 filing status as married filing jointly. The IRS transcript, joint bank statements and rent receipts indicate the petitioner's shared financial responsibilities with S-G- and the petitioner's third affidavit further supplements the detailed information already provided in his second affidavit.

Upon a full review of all of the evidence submitted below and on appeal, the petitioner has established his good-faith entry into the marriage. In his personal affidavits filed in response to the RFE and on appeal, the petitioner offers detailed statements of how he first met S-G-, their courtship, wedding ceremony and shared experiences. When viewed in the totality, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

### *Conclusion*

On appeal, the petitioner has overcome the director's determination that he did not establish his entry into the marriage in good faith. However, the petitioner has failed to establish that S-G- subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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 and the petition will remain denied for the reasons stated above, with each considered an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.