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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: **NOV 18 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)

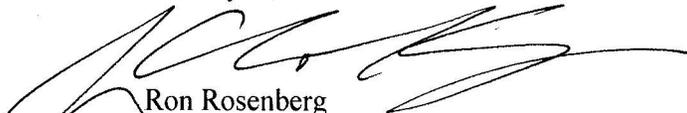
ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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,


Ron Rosenberg
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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty during his marriage. In addition, beyond the director’s decision, the petitioner has not demonstrated that he entered into marriage with his wife in good faith.

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 for immigrant classification as an abused spouse under 204(a)(1)(A)(iii) of the Act are explained further 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.

(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, a citizen of Peru, married M-R¹, a citizen of the United States, on July 4, 2008. He filed the instant Form I-360 on June 10, 2011. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty during the petitioner's marriage. The

¹ Name withheld to protect the individual's identity.

petitioner 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). 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 ground for denial.

Battery or Extreme Cruelty

We find no error in the director's determination that M-R- did not subject the petitioner to battery or extreme cruelty during their marriage. The relevant evidence in the record consists of an affidavit and a statement from the petitioner, photographs, and letters from the petitioner's brother, his friend, and licensed clinical social worker [REDACTED]

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). Congress's intent in allowing a showing of either battery or extreme cruelty was to protect survivors of domestic violence. See H.R. Rep. No. 103-395, at 37-38. The petitioner briefly stated in his statement and affidavit that his spouse had an affair with her stepfather, often belittled the petitioner, was manipulative, lied about paying household expenses and the mortgage, did not cooperate in filing his immigration forms, and threatened him with deportation. He briefly recounted that his wife threw things at him, threatened to hurt him, damaged the house, and left him in debt. He also briefly stated that he felt threatened which his father-in-law told him stories of how he had hurt other people. The photographs show a kitchen, a bathroom with a hole in the wall and a toilet wrapped in tape, and torn material on a wall of an unidentified location. While the petitioner stated that his spouse's behavior depressed him, he did not describe any particular incident in which she physically abused him, and has provided no further substantive information regarding the claimed threatened violence, or established that his wife's behavior was part of an overall pattern of violence or otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

Regarding the letters, [REDACTED] stated that the petitioner suffers from Major Depressive Disorder caused by his wife's and her stepfather's emotional, financial, and legal abuse. [REDACTED] stated that the petitioner was emotionally abused because the petitioner fell in love with M-R-, and after they wed realized that the petitioner was not told the truth that M-R- and her stepfather did not own their house; the petitioner was expected to buy a house and financially support his father-in-law; M-R- actually had three children, and not one child; M-R-'s father was in fact her stepfather, with whom M-R- had a sexual relationship; M-R- may have had children with her stepfather; and that M-R- refused to be intimate with the petitioner. [REDACTED] stated that the petitioner was legally abused because M-R- was uncooperative in the petitioner's immigration process. [REDACTED] also stated that the petitioner was financially abused because M-R- did not pay the mortgage; the petitioner loaned money to his supposed family members that the petitioner never recovered; due to foreclosure the petitioner lost the \$25,000 used to purchase the house; M-R- and her stepfather damaged the house; and the petitioner does not know the whereabouts of M-R-. We do not question

█'s professional expertise, but what █ cites as abuse is not equivalent to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner's friend █ briefly stated that the petitioner was worried and desperate because M-R- mistreated the petitioner, and that M-R- and her stepfather would not let him enter the house when he was there to visit the petitioner. The petitioner's brother briefly asserted that he witnessed how M-R- exploited the petitioner, and that the petitioner underwent therapy due to M-R-'s behavior. Neither the petitioner's friend nor brother described any specific incidents of abuse that they witnessed or were otherwise aware of. Their brief statements are not probative in demonstrating that M-R- ever battered the petitioner or threatened him with harm, or otherwise subjected him to behavior that is equivalent to extreme cruelty.

On appeal, counsel asserts that M-R- criticized and ridiculed the petitioner, threatened him, spent their tax incentive without the petitioner's consent, deceived the petitioner about the number of children she had, lied about filing an immigration petition for him, and caused him to incur significant debt. Counsel also states that the petitioner was threatened by his father-in-law, who was having an affair with M-R-.

Counsel cites *Hernandez v. Ashcroft*, 345 F. 3d 824 (9th Cir. 2003), and states that non-physical actions rise to the level of domestic violence when tactics of control are combined with the threat of harm. Counsel declares that in the instant case M-R- used intimidation and threats to control and dominate her husband and make him emotionally vulnerable. Counsel asserts that M-R-'s behavior was part of an overall pattern of abuse that is equivalent to extreme cruelty, and that █ indicated that the petitioner was psychologically harmed and abused by M-R-'s behavior. The petitioner briefly stated that his wife and father-in-law made vague threats, but the petitioner has not given further substantive information regarding the threats, or otherwise established that his wife's other actions—her extramarital affair, lies, disparaging treatment, lack of cooperation in filing immigration forms, and threats of deportation—were part of an overall pattern of violence or were otherwise equivalent to extreme cruelty.

In *Hernandez*, the court held that extreme cruelty can be assessed under objective standards and is a clinical, nondiscretionary determination subject to judicial review. As this case arose outside of the Ninth Circuit, *Hernandez* is not a binding precedent. Furthermore, the Fifth and the Tenth Circuit Courts of Appeals have come to a contrary conclusion. *Wilmore v. Gonzales*, 455 F.3d 524, 527-28 (5th Cir. 2006); *Perales-Cumpean v. Gonzales*, 429 F.3d 977, 982-984 (10th Cir. 2005). Although *Wilmore* and *Perales-Cumpean* concerned applications for cancellation of removal, both courts cited the definition of battery or extreme cruelty for self-petitioners at 8 C.F.R. § 204.2(c)(1)(vi) and found the definition “far from algorithmic” because it “requires consideration of many discretionary factors” and “does not provide a binding, objective standard that would channel the [agency's] discretion in a manner making it subject to judicial review.” *Perales-Cumpean*, 429 F.3d at 984. *Accord Wilmore*, 455 F.3d at 527-28. Thus, the Fifth Circuit and Tenth Circuit, within whose jurisdiction this case arose, held that a determination of spousal abuse is discretionary and therefore not subject to judicial review. *Id.*

Even if *Hernandez* were binding on this case, the relevant evidence fails to establish that M-R- subjected the petitioner to extreme cruelty under the standard cited by the Ninth Circuit. The record

does not establish that M-R-'s actions, as described by the petitioner, constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence. *See Hernandez*, 345 F.3d at 836-41 (describing the cycle of domestic violence and interpreting the phrase "acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence" in 8 C.F.R. § 204.2(c)(1)(vi)).

When viewed in the aggregate, the preponderance of the relevant evidence does not establish that the actions of the petitioner's wife constituted actual or threatened harm, psychological or sexual abuse, or otherwise 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 the Marriage

Beyond the decision of the director, the relevant evidence in the record also fails to demonstrate that the petitioner married his spouse in good faith. The petitioner briefly recounted in his statement and affidavit that he was introduced to M-R- by her father at their house and he continued to visit her because he liked M-R-'s nature, fell in love, and wanted a family. The petitioner related that they wed on July 4, 2008 at a simple ceremony attended by a few friends and family. The petitioner failed to discuss in further detail how he met M-R-, his period of courtship, engagement, and wedding; their joint residence or any of their shared experiences, apart from the alleged abuse.

The letters from the petitioner's friend and brother mention the petitioner's marital problems, but they do not discuss any social interactions with the petitioner and M-R-, or otherwise demonstrate their personal knowledge of the petitioner's relationship with his wife apart from the claimed abuse. [REDACTED] only briefly stated how the petitioner met M-R-, and primarily discussed the claimed abuse in the petitioner's marriage. [REDACTED] stated in his letter that the petitioner wed M-R- and the petitioner attended family gatherings, but he fails to state whether M-R- was at the gatherings with her husband, and does not recount any social visits with the petitioner and his wife, or otherwise establish he had any other personal knowledge of the relationship.

The petitioner also submitted bank card statements, pre-foreclosure documents, motor vehicle insurance records, a photograph, two cards, and a utility and tax invoice. The writers of the cards indicate that M-R- and the petitioner are couple. The photograph is a picture of the petitioner and a group of unidentified individuals on an unspecified occasion and date. The utility invoice shows the petitioner and his wife's address, but is in the petitioner's name only and covers a period after his wife left in December 2010. The pre-foreclosure documents and real estate tax invoice show the address of the petitioner and his wife, but are only in the petitioner's name and indicate that he was the sole owner of the house where he and his wife lived. The bank account statements are from October 9, 2008 to December 22, 2008, and are in the name of the petitioner and his wife, but only the petitioner's wife made deposits into the account and the average monthly account balance was only \$196, indicating that the petitioner and his wife did not use the account for shared savings or joint expenses. The petitioner indicated in his statement that he saved money to buy a house and a business, but has not submitted any business or financial records such as bank account statements to demonstrate shared savings or joint expenses. While the motor vehicle insurance provides coverage

for the petitioner, his wife and her stepfather, 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 overcome the director's determination that he was not subjected to battery or extreme cruelty during his marriage. Beyond the director's decision, the petitioner has also not established that he entered into marriage with his wife 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *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.