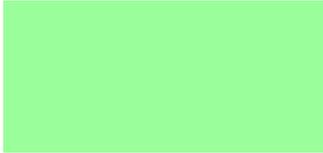


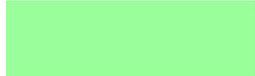


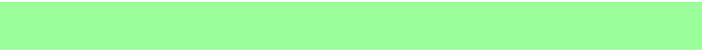
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 07 2014**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

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 THE PETITIONER:

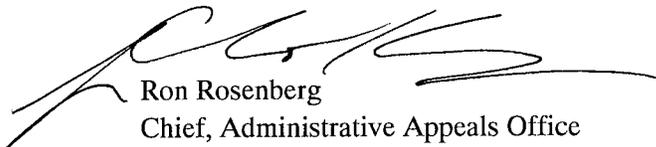
SELF-REPRESENTED

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,


Ron Rosenberg
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 that the petitioner entered into the marriage with his former spouse, a United States citizen, in good faith, and that she subjected him to battery or extreme cruelty during their marriage. On appeal, the petitioner submits a letter/brief and other evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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:

(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.

* * *

(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, a native of Vietnam and citizen of Germany, entered the United States on September 13, 2004 as a visitor under the visa waiver program. On August 12, 2005, he married K-T-¹, a United States citizen, in Michigan and they divorced in Illinois on June 21, 2011. The petitioner filed the instant Form I-360 on July 13, 2012. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty and the petitioner's good-faith entry into marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner appealed.

We review 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 on appeal, the petitioner has not overcome the director's grounds for denial. Beyond the director's decision, the petitioner has also not established that he had a qualifying relationship with his former spouse and is eligible for immediate relative classification based upon that relationship.² The appeal will be dismissed for the following reasons.

Good Faith Entry into the Marriage

The director correctly determined that the petitioner failed to establish that he entered the marriage with his former spouse in good faith. The relevant evidence below includes: the petitioner's personal declaration, letter, and timeline; and letters from the petitioner's cousin, two friends, and a Buddhist monk. In his declaration, the petitioner recounted that he first met K-T- at a party in 2004, they began dating, fell in love, he proposed marriage and began living with her and her family. In his timeline, the petitioner briefly summarized the same assertions, and added that it was around June 2005 when he proposed, they talked to both sets of parents, and decided to marry within 90 days after which he moved in to K-T-'s family home. In his letter, the petitioner indicated that his and K-T-'s interview with U.S. Citizenship and Immigration Services (USCIS) regarding the bona fides of their marriage was unsuccessful, and stated that despite her deceptions they still had a "good faith marriage" on his part. This conclusory statement and the petitioner's explanations concerning the interview are not probative of whether he entered into his marriage with K-T- in good faith. The petitioner did not, in any of his writings, describe in detail their courtship, wedding ceremony, shared residence and other experiences apart from the claimed abuse.

[REDACTED], a Buddhist monk, did not indicate that he ever observed or had personal knowledge of the petitioner's and K-T-'s relationship before they married or prior to June 2009 when the petitioner stopped by his temple. [REDACTED] recalled that he did not know the former couple before they married and felt sorry for the petitioner because K-T- betrayed him. [REDACTED] identified by the petitioner as K-T-'s friend, and [REDACTED], the petitioner's cousin, both stated that they were witnesses in court when the former couple married,

¹ Name withheld to protect the individual's identity.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. sup. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

but they did not describe the wedding, and neither they nor [REDACTED] otherwise established their personal knowledge of the petitioner's relationship with his former spouse.

On appeal, the petitioner submits four personal photographs and a letter/brief. While the photographs show the petitioner and his former spouse together at certain times and places they provide very little probative evidence of a good-faith entry into marriage. In the letter/brief, the petitioner states that he will explain his thoughts on good-faith marriage and then defines the words "marriage" and "spouse." These definitions provide no insight into whether the petitioner married K-T- in good faith. The bulk of the letter/brief contains assertions that adjudicative errors were made below, but fails to articulate an applicable legal or factual basis for these claims. It further suggests that the director's decision was not reviewed by a supervisor. As noted above, we conduct *de novo* review of the record on appeal. See *Soltane v. DOJ*, *supra* at 145.

The letter/brief claims that the petitioner has "submitted hundreds papers of evidence to support that is why I see that USCIS has two (2) times approved the self-petitioner his Prima Facie Petition..." Form I-797, Establishment of Prima Facie Case, is sent to self-petitioners who meet all the initial filing requirements and may be presented to government agencies that provide certain public benefits to some survivors of domestic violence. The notice states: "Establishing a prima facie case for classification under the self-petitioning provisions of the Violence Against Women Act does not necessarily mean that your petition will be approved." A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition. 8 C.F.R. § 204.2(c)(6)(ii). A prima facie determination: (A) Shall not be considered evidence in support of the petition; (B) Shall not be construed to make a determination of the credibility or probative value of any evidence submitted along with that petition; and, (C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements. 8 C.F.R. § 204.2(c)(6)(iv). When viewed in the totality, a preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's spouse did not subject him to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence below includes: the petitioner's personal declaration and timeline; a therapist's evaluation; and letters from a friend and a Buddhist monk. In his declaration, the petitioner recounted that K-T- often traveled with her mother. He learned she was actually visiting her boyfriend in Canada and when he told her in early 2007 that this hurt him, she ignored him. That summer, K-T- decided to move to Las Vegas to study and work. When the petitioner asked to go with her, she said she did not need him and felt he was inadequate. He continued to live with K-T-'s parents who made him feel like a burden, and when K-T- returned in December 2007, she went out every night and ignored him. When the petitioner reminded K-T- that they had an upcoming interview with USCIS, she expressed disinterest, went alone to the interview and lied. He was also confused by the interpreter and felt isolated and rejected as a result of the unsuccessful interview. The petitioner stated that K-T- moved out of the bedroom and they had disputes in which she shouted, used terrible words, and

complained that he was not providing for her financially. In November 2008, when the petitioner had a meeting with attorneys about his pending immigrant petition, he was unable to contact K-T- to request her presence at the meeting. In the petitioner's timeline, he briefly summarized these events, and added that he began to realize in early 2011 that his marriage was over, K-T- was interested in someone else, he could not trust her, and it was in his best interest to move on with his life and obtain a divorce, which he did in June 2011. The petitioner's statements do not demonstrate that his former spouse 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).

In her evaluation dated June 11, 2012, [REDACTED] a licensed marriage and family therapist, stated that the petitioner came to her practice pursuing support for depressive and anxiety-related symptoms he had been experiencing concerning his former spouse. Ms. [REDACTED] concluded that the petitioner's physical presentation, verbal report, and symptoms were consistent with symptoms experienced by others who have experienced domestic violence and economic exploitation. While we do not question Ms. [REDACTED]'s professional opinion, her assessment conveys the petitioner's statements and provides no further, probative information regarding the claimed abuse.

In his brief letter, [REDACTED] recalled that in January 2008, he saw K-T- flaunting another man in front of the petitioner's friends at a karaoke club. [REDACTED] recounted, in his letter dated June 18, 2009, that the petitioner stopped by the temple earlier that month and told him that K-T- was living in Las Vegas, rarely came to Michigan and did not return his calls. [REDACTED] explained that he shared Buddhist teachings on marriage with the petitioner and suggested he come to the temple weekly to meditate and pray with others. Mr. [REDACTED]'s letter provides no probative details concerning the incident described, and neither he nor [REDACTED] indicate that K-T- subjected the petitioner to battery, threats of violence, psychological or sexual abuse, or other conduct constituting extreme cruelty as defined in the regulation.

The letter/brief submitted on appeal indicates that the petitioner learned from friends that K-T- had been cheating on him with her boyfriend in Canada, and that she tried to terminate a USCIS interview so he would not be granted immigrant status. The letter/brief claims that the petitioner experienced pain, humility, stress, lies and cheating and that his former spouse controlled his life, threatened him and affected his eating, sleeping, and seeing and speaking with people. No specific incidents are identified in the letter/brief which contains no probative details concerning the claims of abuse. The letter/brief asserts that the director did not apply the "any credible evidence principle," however, this claim conflates the evidentiary standard prescribed by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. The statute mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This provision prescribes an evidentiary standard. *See* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). This evidentiary standard is not equivalent to the petitioner's burden of proof in this case, which, as in all visa petition proceedings, is the preponderance of the evidence. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). When determining whether the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1).

The letter/brief further asserts that even though the “any credible evidence principle” does not require that an alien demonstrate the unavailability of primary or secondary evidence, the petitioner submitted both primary and secondary evidence including court papers, police records and medical records. The only court papers submitted for the record relate to the petitioner’s divorce, the only police records are those indicating that he does not have a criminal record, and the only medical records relate to the petitioner’s current fiancée’s pregnancy. None of these documents show that K-T- subjected the petitioner to battery or extreme cruelty. In the RFE and her decision, the director addressed the relevant evidence and explained the insufficiency of that evidence to establish the petitioner’s eligibility. We find no error in the director’s decision. The preponderance of the relevant credible evidence does not demonstrate that the petitioner’s spouse ever battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not shown that his spouse subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not established that he entered into the marriage with his former spouse in good faith or that she subjected him to battery or extreme cruelty during their marriage. Beyond the director’s decision, the petitioner has also not established a qualifying relationship with his former spouse and his corresponding eligibility for immediate relative classification based on such a relationship. 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.

ORDER: The appeal is dismissed.