

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **AUG 12 2014**

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)

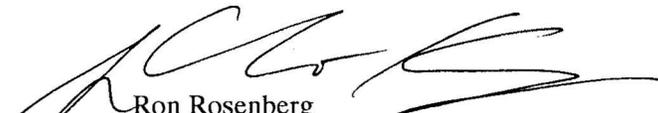
ON BEHALF OF PETITIONER:

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.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director, (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

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 had a qualifying relationship with a U.S. citizen. On appeal, the petitioner submits additional 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).

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 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 . . . 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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 last entered the United States on June 12, 2003 as a nonimmigrant visitor. The petitioner married N-S-¹, a U.S. citizen, on January 30, 2012 in New York, New York. The petitioner filed the instant Form I-360 on August 17, 2012. The director

¹ Names of the petitioner’s spouse and purported prior spouse withheld to protect the individuals’ identities.

subsequently issued a Request for Evidence (RFE) of: N-S-'s U.S. citizenship; the termination of the petitioner's claimed prior marriage; the petitioner's residence with N-S-; his good-faith entry into the marriage; and the requisite abuse. The petitioner responded to the RFE with additional evidence, which the director found sufficient in part but insufficient to establish that the petitioner had a qualifying relationship with N-S-. The director denied the petition and counsel filed a timely appeal.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record as supplemented on appeal demonstrates that the petitioner has overcome the director's ground for denial. Because the petitioner remains ineligible on other grounds, the matter will be remanded to the director for further action.

Qualifying Relationship

To establish a qualifying spousal relationship with a U.S. citizen abuser, a self-petitioner must submit evidence of the marriage, the spouse's citizenship and the termination of any prior marriages of the self-petitioner. 8 C.F.R. § 204.2(c)(2)(ii). The petitioner initially submitted a New York marriage certificate reflecting that he and N-S- wed on January 30, 2012. However, the petitioner's administrative record showed that on March 22, 2004 in [REDACTED] New York, he was previously married to C-A-, a U.S. citizen, who also filed a Form I-130 petition for alien relative on his behalf. In the RFE, the director requested, among other things, evidence of the termination of the petitioner's marriage to C-A- as well as evidence of N-S-'s U.S. citizenship. In response to the RFE, the petitioner provided a copy of N-S-'s U.S. passport as evidence of her citizenship. The petitioner also submitted a statement that he was never married to C-A- and had paid an immigration practitioner for assistance with his "immigration document." The petitioner explained that he gave the immigration practitioner his information and was later given a work permit. The petitioner stated that on June 2, 2013, he inquired with the [REDACTED] New York about the claimed marriage to C-A- and that no record was found.

The director concluded that the record did not contain satisfactory evidence to demonstrate that the petitioner had a qualifying relationship with N-S- because he did not submit evidence that any searches of the New York civil registries were conducted. On appeal, the petitioner submits a certification from the State of New York Department of Health, [REDACTED] New York, which states that a search over the period from January 1, 1986 through November 4, 2013 revealed no record of a marriage between the petitioner and C-A-. The petitioner has thus shown that he was not married to C-A- at the time of his marriage to N-S- and the record contains no other indication that his marriage to N-S- was invalid. Accordingly, the petitioner has overcome the director's ground for denial and established, by a preponderance of the evidence, that he has a qualifying relationship with a U.S. citizen, as required by subsection 204(a)(1)(A)(iii)(II)(aa) of the Act.

Battery or Extreme Cruelty

On appeal, the petitioner has overcome the director's ground for denial. However, as the record is presently constituted, the petitioner has not demonstrated that his wife, N-S- subjected him to battery or extreme cruelty. The relevant evidence in the record contains the petitioner's personal declaration, a

letter from family member [REDACTED] a letter from licensed psychotherapist [REDACTED] and a Domestic Incident Report (DIR).

In her letter, Ms. [REDACTED] stated that she met with the petitioner for one, 50 minute session on November 19, 2012. She stated that the petitioner's overall mood was "despair, helplessness, and isolation." Ms. [REDACTED] further stated that N-S-'s urge to control all aspects of her relationship with the petitioner resulted in the decline of his emotional and physical health. While we do not question Ms. [REDACTED]'s professional expertise, her brief assessment summarizes the responses given by the petitioner and does not provide further, substantive information demonstrating that the actions of N-S- included battery or constituted extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi).

The DIR dated July 21, 2013, reflects that the petitioner filed a report with the police stating that he "is just tired of his wife abusing him." The petitioner did not report any injuries and did not indicate that he was fearful of his wife. The DIR states that there was no prior history of domestic violence or a previously filed domestic violence police report and N-S- was not present at the time the report was made. A copy of the DIR and a Victims Rights Notice was given to the petitioner and no arrest or other action was taken at that time. There were no additional details in the DIR regarding any specific incidents of abuse.

Nonetheless, 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 personal declaration, the petitioner briefly stated that N-S- was a jealous person who demanded to know his every movement. He stated that she threw things at him, hit him with spoons and other items, and purposely cooked food with too much salt so that it was inedible. The petitioner did not describe in detail any particular incident of abuse or otherwise provide any probative information about N-S-'s treatment of him. Additionally, the petitioner did not discuss the underlying basis of the DIR dated one day prior to his declaration. In his letter, the petitioner's nephew [REDACTED] stated that since the petitioner got married, he always looked depressed and sad. Mr. [REDACTED] did not describe any incidents of abuse or indicate that the petitioner's apparent depression and sadness were caused by his wife's battery or extreme cruelty. Neither the petitioner's declaration nor Mr. [REDACTED] letter demonstrates that the petitioner's wife ever battered him, or that her behavior involved actual or 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) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence within the present record also fails to demonstrate the petitioner's entry into his marriage in good faith. The petitioner submitted two joint bank statements, a residential lease, one gas and electricity account statement, and photographs of the petitioner and N-S- together. The photographs show that the petitioner and N-S- were pictured together at their wedding and other unidentified occasions. The lease shows that the petitioner and N-S- resided together and at one time shared a single utility account. The joint bank statements do not show any activity or otherwise indicate

that the accounts were used by both parties. These documents are insufficient to establish that the petitioner married N-S- in good faith.

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 his declaration, the petitioner briefly recounted that he met N-S- on June 19, 2010 at a wedding reception when he asked her to dance. He stated that after the dance, they talked and exchanged telephone numbers and that about a year later, they decided to get married. The petitioner recounted that after the wedding ceremony, they had a party and spent three nights in the Poconos for a honeymoon. The petitioner briefly described other things that they did together after their marriage, but he did not provide further probative information about how he met his wife, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the claimed abuse.

A full review of the relevant evidence fails to establish the petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has overcome the director's ground for denial and has established that he has a qualifying spousal relationship with N-S-. However, de novo review of the record shows that the petitioner has not demonstrated that N-S- battered him or subjected him to extreme cruelty during their marriage and that he entered into their marriage in good faith.

Consequently, the matter will be remanded to the director to request the appropriate evidence relating to the petitioner's good-faith entry into marriage with N-S- and evidence that N-S- subjected the petitioner to battery or extreme cruelty during their marriage. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The October 30, 2013 decision of the Vermont Service Center is withdrawn. The petition is remanded to that service center for further action and issuance of a new decision. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.