



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **AUG 13 2014** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-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)

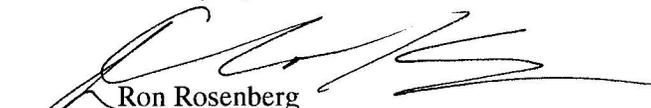
ON BEHALF OF PETITIONER:

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 now former U.S. citizen spouse.

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

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 explained in 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 explained in 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 Morocco who entered the United States on December 21, 2010, using a B-2 visitor's visa. The petitioner married R-M-¹ a U.S. citizen, on December 22, 2010, in

¹ Name withheld to protect the individual's identity.

Florida. The petitioner filed the instant Form I-360 on May 2, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and R-M-'s battery or extreme cruelty. The petitioner, through counsel, timely responded to the RFE with additional evidence including a copy of the court order dissolving his marriage to R-M- on February 29, 2012. The director found the petitioner's response insufficient to establish his eligibility and denied the petition. Counsel filed a timely appeal.

We conduct appellate review on a *de novo* basis. 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. Counsel's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The petitioner failed to establish that R-M- subjected him to battery or extreme cruelty below and counsel's claims on appeal fail to overcome this ground for denial. In the petitioner's initial statement, he described how his now ex-wife became enraged for the simplest things, demanded he quit school, and locked the door when he was home so that he could not leave, making him a prisoner in their apartment. He also stated that when he did go out, she frequently threw his clothes onto the street. According to the petitioner, she would scream at him when he was asleep and made him sit on the floor as if he was a child in "time out." He claimed she called him names, insulted his religion and culture, and that during one incident, he became so frustrated that he hit the floor with his hand, breaking his finger. In addition, the petitioner contended his ex-wife had a history of serious psychological problems that she did not tell him about. He stated he had to see a psychologist and is now homeless. In response to the RFE, the petitioner submitted an additional statement, clarifying that he feared disobeying his former wife, that she allowed him to go out with friends in order to borrow money from them, and that on those occasions when he did leave the apartment, she would refuse to let him back in and threw to his belongings and passport by the dumpster. He stated that he continued to live in fear that R-M- would assault him again.

In her evaluation of the petitioner, licensed mental health counselor indicated that the petitioner was previously diagnosed with Adjustment Disorder with Mixed Anxiety and Depression in April 2010, and was prescribed medication for anxiety, depression, and sleep problems. She stated that the petitioner reported his former wife would wake him up early and yell at him to cook her breakfast, threatened to have him deported, and refused to let him attend prayer at the Mosque. She stated that when the petitioner returned home from working, his ex-wife demanded all of the money he had just made, and often locked him out, throwing his clothes and passport onto the street. Ms stated that the petitioner moved out, stayed with a friend for two and a half months, and has been residing at the Mosque since August 1, 2011. She concurred with the diagnosis of Adjustment Disorder with Mixed Anxiety and Depression.

The record contains documentation establishing that the petitioner's ex-wife has a history of mental health issues and that on February 24, 2011, the petitioner sought emergency medical care for a broken finger. Nonetheless, the petitioner's statements and the psychological report did not describe in probative detail any battery or other behavior that would constitute extreme cruelty as that term is

defined under the regulation at 8 C.F.R. 204.2(c)(1)(vi). There is no indication in the medical records that the petitioner's broken finger was related to his ex-wife's behavior. Although the petitioner claimed he feared being hit, kicked, or slapped again, he failed to describe any incident in which his former wife physically assaulted him or threatened to do so. To the extent the petitioner asserted he is depressed because his ex-wife abused him so badly, the psychological report indicated he was diagnosed with Adjustment Disorder with Mixed Anxiety and Depression and prescribed medication during his previous visit to the United States in April 2010, prior to having any contact with R-M-online. In addition, the psychological report indicates that since the petitioner separated from his former wife, his mood had improved and that although he appeared slightly depressed, the petitioner attributed his condition to "ongoing divorce issues with fear of deportation," identifying his ex-wife's mental illness, medication non-compliance, and her emotional lability as contributors to their separation.

Letters from the petitioner's friends, [REDACTED] did not describe any personal knowledge regarding R-M-'s mistreatment of the petitioner other than Mr. [REDACTED] contention that he heard her yell at the petitioner and call him names on one occasion. With respect to his claimed imprisonment in his own home, the petitioner failed to provide any specific details regarding being locked in his apartment and the letters from Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] indicated they saw the petitioner outside of his home on numerous occasions. In addition, a letter from an adult education center indicated that the petitioner attended English language classes Monday through Friday, 8:00 a.m. to 1:00 pm, from January 18, 2011, until February 28, 2011. According to the Form I-360, the petitioner resided with his spouse from December 22, 2010, until March 2, 2011. Therefore, he attended classes for six weeks beginning less than one month after the couple married up until two days before he moved out of the apartment, a fact which shows he was not imprisoned in his own apartment.

On appeal, counsel contends the petitioner was the victim of emotional and economic abuse, as well as immigration abuse because his ex-wife threatened him with immigration consequences. Although counsel references a message R-M- sent to the petitioner on Facebook, her brief statement that she will "call immigration to cancel everything, if thats what u want" is equivocal. The record does not show that the petitioner's ex-wife's behavior included actual or threatened violence, psychological or sexual abuse, or otherwise constituted 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 established that his former 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.

Entry into the Marriage in Good Faith

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). 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 relevant evidence includes the petitioner's statements, a blank check, bank account statements, a lease, and letters from friends and family.

In the petitioner's initial statement, he described how he met R-M- through a Muslim dating website and came to the United States to meet her. According to the petitioner, he was surprised when R-M- and her son showed up at his cousin's house the morning he arrived, asked him to marry her, and took him to obtain what he thought was a marriage license. In his subsequent statement in response to the RFE, the petitioner described being "tricked and manipulated into getting married" and asserted that his only intention had been to inquire about getting married. He explained that he did not even know they were married until she told friends of their marriage, and that he felt ashamed and "didn't know how to get out of it." A letter from the petitioner's cousin and the cousin's wife briefly stated that they were the guests of honor at the couple's wedding and that the couple visited them in the Disney area in Florida, but they did not describe the wedding or their visit in any detail. Letters from friends [REDACTED] indicated that they had seen the petitioner with his ex-wife in the past, but they did not discuss any particular visit or social occasion they shared with the former couple.

The relevant evidence submitted below fails to demonstrate the petitioner entered his marriage in good faith and counsel's claims on appeal fail to overcome this ground for denial. The blank check, bank statements and lease indicate that the couple comingled funds and intended to live together for another year. However, according to the, at the time he married R-M-, he had no marital intentions. As the petitioner himself described in his statement, "I came to the US to visit and meet [R-M-], not to get married" The petitioner's friends, his cousin and his cousin's wife do not discuss the petitioner's marital intentions or provide other information sufficient to establish their personal knowledge of the petitioner's relationship with his ex-wife. The record lacks probative evidence regarding the petitioner's courtship, wedding ceremony, marital residence and experiences sufficient to overcome the petitioner's statement that his former wife tricked him and he had no intention of marrying her at the time.

Counsel's contention on appeal that the petitioner entered into a bona fide marriage with the intention to establish a life together is contradicted by the petitioner's own statements that at the time of his marriage, he did not intend to marry R-M-. Counsel cites to *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), and other cases to assert that we should examine the intent of the parties at the inception of the marriage to determine its bonafides. Counsel disregards the fact that the petitioner explicitly stated that at the time of his marriage, he had come to the U.S. to visit and meet, not marry, his former wife. To the extent the petitioner claims he nonetheless "tried to honor [his] commitment" to his former wife, his statements and the other relevant evidence are insufficient to demonstrate that he entered the marriage in good faith. When viewed in the totality, the preponderance of the relevant evidence does not 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 failed to establish that he was subjected to battery or extreme cruelty by his ex-wife or that he entered the marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.