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

(b)(6)

U.S. Citizenship and Immigration Services

Date: AUG 2 0 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 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 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 by his wife during their marriage and that he married her in good faith. 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 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.

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(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 Nigeria who entered the United States on November 27, 2009, using a nonimmigrant visa. The petitioner married S-T-[1], a U.S. citizen, on May 26, 2010, in

[1] Name withheld to protect the individual's identity.

The petitioner filed the instant Form I-360 on October 17, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good faith entry into the marriage and S-T's battery or extreme cruelty. The petitioner timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.[2]

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. The evidence submitted on appeal does not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

In his first letter, the petitioner recounted that after five months of marriage, his wife's attitude started changing and she began to insult him in front of other people. For example, the petitioner recalled his wife saying he was messy and useless and she was getting tired of him. The petitioner explained that his wife hurt his feelings by once telling him to sleep on the sofa and insulting his Christmas gift. He also stated that his wife would throw things when she was irritated. He described that in January 2011, he had two friends over to watch football and when she returned home, she started a fight, telling him he could not use her television. According to the petitioner, he felt ashamed in front of his friends, and when he tried to talk to her in the kitchen, she hit him on the back with a frying pan. The petitioner stated that was very upset and left, but that stayed and tried to speak to S-T-, but it was useless. In response to the RFE, however, the petitioner stated that his wife tried to hit him with a pan in front of his friend, who came to his rescue and stopped her. The petitioner explained that it was on a different occasion when S-T- hit him with a pan. Letters from indicated that they tried to talk to S-T- about the couple's marital problems, but that she would not cooperate.

The petitioner's two statements submitted below conflict with each other. In the petitioner's first statement, he claimed that his wife hit him in the back with a pan when his friend, was present. However, in the petitioner's second statement, he claimed that his wife tried to hit him with a pan, but that intervened. Notably, the letter from fails to mention this incident altogether.

Licensed psychotherapist indicated that in August 2011, the petitioner's psychological well-being was in severe decline due to his wife's hostile, emotionally and physically aggressive acts. The psychotherapist described the petitioner's symptoms, and diagnosed him with severe major depressive disorder with psychotic features. A subsequent letter from Ms. from April 2013 indicated that the petitioner continued to have the same diagnosis, but that his mental illness had deteriorated further. Although her letters show the petitioner sought mental health treatment, Ms.

[2] This decision is from an appeal of the Form I-360 the petitioner filed on October 17, 2011. The petitioner previously filed a Form I-360 on March 3, 2011, which was denied by the Vermont Service Center on July 27, 2011. While the instant appeal was pending, the petitioner filed a third Form I-360 on August 19, 2013. As the third petition remains pending before the Vermont Service Center, we have not considered any additional evidence submitted in support of that petition.

did not describe in probative detail any particular incident of 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). We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty.

On appeal, the petitioner submits a third statement as well as photographs of marks on the side and back of his head and bottles of prescription medications.[3] This third statement is almost identical to the petitioner's previous statements with the exception that the incident when S-T- hit him, or tried to hit him, with a pan is not addressed. A letter from submitted on appeal described that when he was visiting the couple, he stopped S-T- from hitting the petitioner with a pan. According to three days after this incident, he saw the petitioner with marks on his body and the petitioner told him that S-T- was responsible for the marks and had spat on him. described how he tried to help the couple reconcile, but that S-T- was difficult. He stated that he brought the petitioner to his house when S-T- kicked him out of the house on January 5, 2011.

An additional letter from Ms. submitted on appeal states the petitioner no longer has suicidal thoughts or psychotic symptoms, but will continue with treatment until he recovers from his severe depression. She describes incidents the petitioner still recalls, including waiting in the cold for his wife to open the door to their apartment because he did not have keys. Copies of medical records submitted on appeal show the petitioner began psychiatric treatment on April 1, 2013, with Dr. who diagnosed him with severe major depression with psychotic features and prescribed medications for his symptoms. Dr. described that the petitioner reported that his depression and anxiety started after his wife left him in January 2011, and that he told Dr. that she was abusive.

After a careful review of all of the evidence, including the new evidence submitted on appeal, the record does not establish that S-T- subjected the petitioner to battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi). The additional statements from the petitioner and Ms. on appeal do not articulate any new, additional probative information and the petitioner does not discuss or explain his previous inconsistency regarding whether his wife hit him, or whether she tried to hit him, but intervened. The evidence on appeal also fails to resolve the inconsistency regarding the claimed battery in January 2011. The newly submitted letter from does not probatively discuss his claimed intervention of the assault on the petitioner, does not describe any knowledge of other incidents of abuse, and does not provide any specific details regarding the petitioner's claimed injuries. In addition, the medical records from Dr. conflict with the petitioner's statement. Dr. stated that the petitioner claimed he was hit in the head with a pan whereas the petitioner's previous statement asserted he was hit on his back, an incident he initially stated was in front of but subsequently changed. These unresolved inconsistencies detract from the credibility of the petitioner's claim. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner's 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 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.

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[3] The petitioner submitted three other photographs of claimed injuries, but they are out of focus.

Entry into the Marriage in Good Faith

The director also correctly determined that the petitioner failed to establish that he married S-T- in good faith and the additional evidence submitted on appeal does not overcome this ground for denial. The record contains the petitioner's statements, letters from friends photographs of the wedding, and a lease in the couple's name.

Evidence of entry into a good faith marriage is not limited to any specific documents but rather, all credible, relevant evidence, including "evidence regarding courtship, wedding ceremony, shared residence and experiences" and "affidavits of persons with personal knowledge of the relationship." *See* 8 C.F.R. § 204.2(c)(2)(vii). In this case, the photographs and lease show that the petitioner and S-T- were pictured together and shared a residence, but they are insufficient to establish that the petitioner married his wife in good faith. The relevant statements and letters also do not establish the petitioner's claim. The petitioner asserted he married his wife because of unconditional love. He described the night he met S-T-, that she proposed to him, and that he bought her an engagement ring. He briefly listed places they went together, but he did not describe in further detail their courtship, wedding ceremony, or shared residence and experiences apart from the claimed abuse. The letters from initially submitted below stated only that the couple lived together and did not provide any probative information about the petitioner's marital intentions. An additional letter from submitted on appeal briefly stated he was with the petitioner when the couple met and that he was the best man at their wedding. However, he failed to provide any further probative details regarding the couple's courtship, wedding ceremony, or shared residence and experiences. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner entered into marriage with S-T- 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 establish that he was subjected to battery or extreme cruelty by his wife during their marriage 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.

ORDER: The appeal is dismissed.