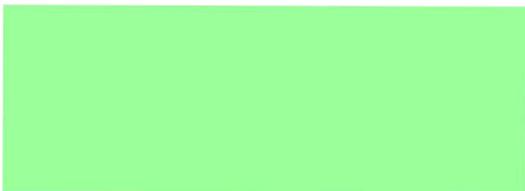




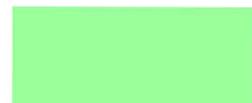
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 28 2014**

Office: VERMONT SERVICE CENTER File:

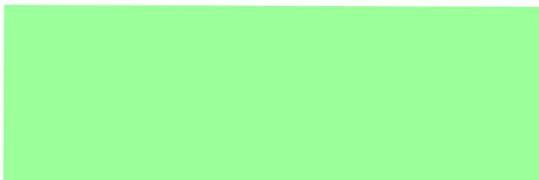


IN RE: Self-Petitioner:



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:

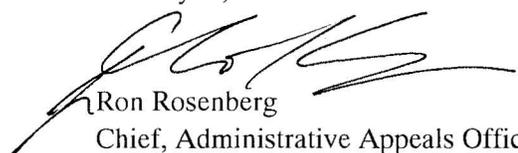


INSTRUCTIONS:

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 his former spouse, a United States citizen.

The director denied the petition for failure to establish the requisite battery or extreme cruelty, qualifying spousal relationship and corresponding eligibility for immigrant classification, joint residence, and good-faith entry into marriage.

On appeal, the petitioner, through counsel, submits two supplemental affidavits.

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 citizen of India, married N-M-¹, a United States citizen, on November 12, 2007 in India. The petitioner entered the United States on January 22, 2010 as N-M-'s nonimmigrant spouse, and they divorced on [REDACTED] in New York. The petitioner filed the instant Form I-360 on August 15, 2011. The director subsequently issued Requests for Evidence (RFEs) of, among other things, the requisite battery or extreme cruelty, joint residence, and good-faith entry into marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's 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. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Marriage

We find no error in the director's determination that the petitioner did not enter into the marriage with his former spouse in good faith. In his initial affidavit, the petitioner stated that he met N-M- in an online chat room in 2007, they kept in contact electronically and by telephone, and N-M- booked a trip to India to meet him. The petitioner recounted how when N-M- arrived in November 2007, he knew instantly he wanted to spend his life with her, told her he was in love and felt a divine connection, and the next day his Pastor married them. The petitioner recalled that N-M- returned to the United States and filed an immigrant petition on his behalf, but the process took a long time, caused problems in their marriage, and N-M- suggested that she move to India which the petitioner discouraged. He explained that upon his arrival in the United States he was greeted by N-M- and her two children, the first few months were good but then things became ugly. The petitioner did not describe in detail his first in-person meeting with N-M-, their courtship, engagement, wedding ceremony, joint residence, or any shared experiences apart from the claimed abuse.

In their affidavits, [REDACTED] stated identically that they are friends of the petitioner, were present at his wedding, and have accurate knowledge of "the event concerning the Marriage." Neither affiant provided probative information concerning the petitioner's relationship with N-M- or his marital intentions. A hotel and postal receipts show that N-M- stayed in India from

¹ Name withheld to protect the individual's identity.

November 10 to November 18, 2007 and shipped items to the petitioner in India on two occasions. The copied photographs show the petitioner and his former spouse together at their wedding and on other unspecified occasions.

In response to the RFE, the petitioner submitted affidavits from four other friends. In their affidavits, [REDACTED] all identically stated that they have known the petitioner for about three years, and that he told them many times about the things his former spouse did to him. The affiants address the claimed abuse, but not the petitioner's marital intentions.

Counsel does not address on appeal the petitioner's requisite good-faith entry into marriage. On appeal, the petitioner submits supplemental affidavits from himself and [REDACTED]. In his supplemental affidavit, the petitioner briefly summarizes the same assertions made below, and adds that he entered into his marriage with N-M- before his pastor, community and God, would not have done so if he was not serious, and thus the breakdown of the marriage was devastating. The petitioner does not describe in detail his first in-person meeting with N-M-, their courtship, engagement, wedding ceremony, joint residence, or any shared experiences apart from the claimed abuse. In her supplemental affidavit, Ms. [REDACTED] states that the petitioner is a religious and caring person who left his life in India only to make a family with N-M-. Ms. [REDACTED] provides no further probative information concerning the petitioner's marital intentions. When viewed in the totality, the 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.

Joint Residence

The director also did not err in determining that the petitioner did not reside with his former spouse during their marriage. The petitioner stated on the Form I-360 that he resided with N-M- from January 2010 to May 2010 and their last shared residence was on [REDACTED] New York. However, as noted in both the RFE and the director's decision, the petitioner did not submit any evidence to establish that he and his former spouse resided together. In his initial affidavit, the petitioner stated only that he "stayed with" N-M- and her children at the [REDACTED] home. In their affidavits, Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] did not discuss the petitioner's residence during his marriage. None of the photographs appear or were identified as having been taken at any marital residence. Mr. [REDACTED] wrote in his affidavit that he and his wife used to pick the petitioner up from home and give him rides to church, and Ms. [REDACTED] stated in her initial affidavit that N-M- once talked about kicking the petitioner out of the house and later did. Neither Mr. [REDACTED] nor Ms. [REDACTED] indicated that they ever actually visited the petitioner and N-M- inside their home.

On appeal, counsel does not address the requisite joint residence or respond to the evidentiary deficiencies identified by the director. In her supplemental affidavit, Ms. [REDACTED] states that she and her husband visited the petitioner and N-M- at the home they shared while married, but she does not state the address or provide any other probative details concerning the claimed joint residence. In his supplemental affidavit, the petitioner repeats that he and N-M- lived together at the [REDACTED] residence, and adds that it was on the second floor. The petitioner's statements provide no further

probative information about his claimed joint residence with N-M-. A preponderance of the relevant evidence does not demonstrate that the petitioner resided with his former spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former spouse did not subject him to battery or extreme cruelty as defined in the regulation, and the evidence submitted on appeal fails to overcome this ground for denial. In his initial affidavit, the petitioner stated that after a few months of marriage, N-M-'s children refused to speak or eat with him and cried if left alone with him. The petitioner's pastor suggested marital counseling, which he and N-M- received for several months. He wrote that he tried to be a good father but the children refused to accept him and believed lies N-M- told them about him. The petitioner stated that N-M- expressed doubts about their marriage and falsely told church members that he abused her. He recounted how one night N-M- threatened to divorce him, showed him papers he refused to sign, told him to leave the house, became physically aggressive and threw some of his belongings out of a window. The petitioner went to church and talked to the pastor who said he did not know what to believe but would let him spend the night. The petitioner stated that he tried to reconcile with N-M- but she was not interested and because he did not know what lies she told, he became uncomfortable and stopped attending church. 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 Ms. [REDACTED] first affidavit, she stated that the petitioner spoke often about what N-M- did to him. She recounted how N-M- once told her she wanted to kick the petitioner out of the house and send him back to India. Ms. [REDACTED] recalled that the petitioner called after N-M- told him to leave and she helped him collect his things. In Mr. [REDACTED] affidavit, he stated that he knew the petitioner from church, they became close friends, and the petitioner told him often how abusive N-M- was to him. Mr. [REDACTED] added that he could tell the petitioner was emotionally stressed. In his affidavit, Mr. [REDACTED] stated that the petitioner would come to his restaurant and tell him about the cruel things N-M- did to him. In his affidavit, Mr. [REDACTED] stated that he started to find out from the petitioner what was going on in his marriage and could see he was stressed. The affiants all convey the petitioner's statements to them and provide no further, probative information regarding the claimed abuse. With the exception of Ms. [REDACTED] none of the affiants indicated that they ever observed the petitioner's relationship with N-M-, and Ms. [REDACTED] described only a single conversation in which N-M- expressed a desire to separate from the petitioner. None of the affiants stated that N-M- subjected the petitioner to battery, or described actions comparable to threats of violence, psychological or sexual abuse, or other conduct constituting extreme cruelty as defined in the regulation.

On appeal, counsel does not address the requisite battery or extreme cruelty. In his supplemental affidavit, the petitioner states that N-M- cursed at him and threatened to leave him or send him back to India. He recounted the incident in his initial affidavit in which N-M- kicked him out of the apartment and threw his belongings outside. The petitioner writes that N-M- followed through with her threat to divorce him, then states that the reason they divorced is because he could no longer deal with her abusive treatment. In her supplemental affidavit, Ms. [REDACTED] writes that she witnessed N-M-'s cruelty

toward the petitioner when during one visit, N-M- threatened to send him back to India. She states that N-M- admitted to her that she told unspecified “cruel things” to her children about the petitioner because she was trying to make him miserable. Neither the petitioner’s nor Ms. [REDACTED] additional statements demonstrate that N-M- subjected the petitioner to battery, threats of violence, psychological or sexual abuse, or other conduct constituting extreme cruelty as defined in the regulation. The preponderance of the relevant evidence does not demonstrate that the petitioner’s former 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

The petitioner has not overcome the director’s grounds for denial on appeal. The petitioner has not established a qualifying relationship with his former spouse and his corresponding eligibility for immediate relative classification based on such a relationship. He has also not demonstrated that he entered into the marriage with his former spouse in good faith and that during their marriage, he resided with her and she subjected him to battery or extreme cruelty. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these five 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.