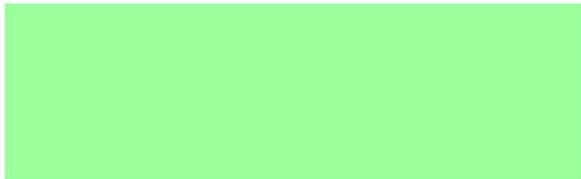
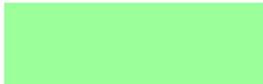


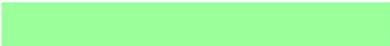
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U.S. Citizenship
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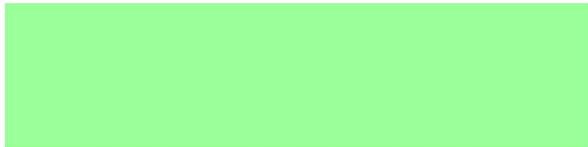


Date: DEC 09 2014 Office: VERMONT SERVICE CENTER File: 

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (“acting 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.

On February 5, 2014, the acting director denied the self-petition for failure to establish a qualifying relationship with a U.S. citizen and corresponding eligibility for immigrant classification based upon such a relationship because the divorce decree from the petitioner’s first marriage was fraudulent. The acting director further found that the petitioner failed to establish that he entered into his second marriage in good faith and was battered or subjected to extreme cruelty during that marriage. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

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 an abused spouse self-petition are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (i) (A) Is the spouse of a citizen or lawful permanent resident of the United States [and]
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

(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 explained 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 Nigeria who last entered the United States on February 20, 2007, as a nonimmigrant visitor. On May [REDACTED] the petitioner married, Y-S-¹, a U.S. citizen, in [REDACTED] Massachusetts. The petitioner filed the instant Form I-360 self-petition on June 14, 2010. The director subsequently issued a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID) for failing to establish, among other things, a qualifying relationship with a U.S. citizen. The petitioner, through counsel, responded with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

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

Battery or Extreme Cruelty

The petitioner's initial statement and his subsequent statements submitted in response to the RFE and the NOID contained credible and detailed statements describing several, specific incidents of battery or extreme cruelty by Y-S-. For instance, the petitioner recounted that on August 16, 2008, while they were attending a Nigerian festival, Y-S- tried to distract him from talking with other guests and when he did not answer her, she threw a chair at him that hit him behind his thighs. He also recounted that on September 16, 2007, at a church gathering, Y-S- did not let him talk with anyone and wanted to go home, but the petitioner did not want to leave and Y-S- poured a cup of soda on his shirt. He also described that Y-S- once threw the phone at him, once punched him in the face, threw objects at him, and was sexually aggressive with him. He further provided probative details regarding instances when she would not let him leave the house by taking his keys and physically blocking the door.

Affidavits from the petitioner's friends, [REDACTED], all attested to personally observing Y-S-'s physical assaults on the petitioner. For instance, Mr. [REDACTED] recounted seeing Y-S- hit the petitioner with a chair at the Nigerian festival on August 16, 2008. Similarly, Mr. [REDACTED] described witnessing Y-S- pouring soda on the petitioner on September 16, 2007.

¹ Name withheld to protect the individual's identity.

In addition, the record includes a protective order against Y-S- as well as a psychological report diagnosing the petitioner with depressive disorder as a result of Y-S-'s mistreatment of him. Upon a full review of all the relevant and credible evidence, the petitioner has demonstrated by a preponderance of the evidence that Y-S- subjected him to battery and extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The acting director's contrary determination is withdrawn.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The appeal cannot be sustained, however, because the petitioner has not established that he has a qualifying relationship with Y-S-. On the Form I-360 self-petition, the petitioner did not answer the question regarding how many times he had been married. He also did not indicate how many times Y-S- had been married. The acting director issued an RFE, stating, among other things, that Y-S- filed a Form I-130 relative petition on behalf of another spouse, which was approved on December 2, 2009, prior to the petitioner's filing of the instant Form I-360 self-petition. The acting director requested evidence addressing whether the marriage to Y-S- had been terminated. In response to the RFE, the petitioner submitted an affidavit, dated February 15, 2011, stating that he had been married two times. According to the petitioner, he married Y-S-, his second wife, on May [REDACTED], lived with her until March [REDACTED] and has not obtained an annulment or a divorce from her. The acting director subsequently issued a NOID which stated that the divorce decree the petitioner submitted for his first marriage was not valid and that evidence in the record indicated that Y-S- married another individual on February [REDACTED]. In response to the NOID, the petitioner questioned why the divorce decree from his first wife was invalid and asserted that Y-S-'s "subsequent marriage does not have any effect" on his self-petition because he married her prior to her February [REDACTED] marriage noted by the acting director.

The acting director denied the self-petition for the reasons set forth in the NOID. On appeal, counsel asserts the divorce decree is an absolute final decree issued by a civil authority in Nigeria and submits an opinion from a Nigerian attorney.

A de novo review of the record reflects that the petitioner did not establish that his first marriage ended in a valid divorce and the additional evidence submitted on appeal fails to overcome this ground for denial. The record shows that an investigator from the U.S. Consulate in Lagos visited the Lagos Island Customary Court, where the divorce decree was purportedly issued. According to the Court's Registrar, the divorce decree is a forgery and there is no record of it in the court's registry. In addition, the divorce decree contains grammatical and spelling errors, and the text on the second page of the "certified true copy" is cut off. Furthermore, the legal opinion submitted on appeal, titled "Legal Opinion on Marriage and Dissolution of Marriage Under Native Law and Custom in Nigeria with Emphasis on Dissolution" is a general legal opinion that does not specifically address, evaluate, or analyze the divorce decree that the petitioner submitted for his self-petition. Consequently, the petitioner has not established by a preponderance of the evidence that his first marriage ended in a valid divorce. Because the petitioner failed to establish he was validly divorced from his first wife, he was not free to subsequently marry Y-S- and, therefore, cannot establish he had a qualifying spousal relationship with a U.S. citizen. Counsel has not addressed whether Massachusetts, where the petitioner and Y-S- were married, would consider the petitioner's marriage to Y-S- to be valid in the

absence of a valid divorce decree from his first wife.² Consequently, the petitioner has failed to demonstrate that he has a qualifying spousal relationship with a U.S. citizen and is eligible for immediate relative classification based on such a relationship pursuant to section 204(a)(1)(A)(iii)(II)(aa), (II)(cc) of the Act.

Entry into the Marriage in Good Faith

In the petitioner's initial statement, he briefly recounted dreaming that he and Y-S- would have a good family and a joyful marriage to last a lifetime. In response to the RFE, the petitioner did not address his entry into the marriage in good faith. In response to the NOID, the petitioner described meeting Y-S- in June 2006 at the [REDACTED] where she worked. He briefly recounted that she talked to him while he was there, that they talked on the telephone, and then a week later, he moved to Massachusetts so they could be together. He stated they loved each other, spent a lot of time together, and met each other's families. He recounted becoming best friends and being inseparable.

The petitioner did not describe in probative detail the couple's courtship, wedding ceremony, shared residence, and experiences apart from the abuse. Letters from the petitioner's friends also failed to provide more information regarding the petitioner's marital intentions. The petitioner's friends, [REDACTED] did not describe, for example, any specific contact with the petitioner and Y-S-, any particular visit or social occasion with the couple, or any interactions with the couple that would establish their personal knowledge of the relationship. Although the record contains evidence of car and life insurance policies, a joint bank account, and photographs of the couple, without a more probative statement from the petitioner regarding his marital intentions and probative details from his friends in support of the petitioner's claims, the preponderance of the relevant evidence does not establish that the petitioner entered into marriage with Y-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

Although the petitioner demonstrated that Y-S- subjected him to battery or extreme cruelty during their relationship, he has not shown that she was considered his spouse at the time. Thus, the petitioner has not established a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immigrant classification based upon such a relationship. He has also not established that he entered into their marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

² See MASS. GEN. LAWS ANN. 207 §4 (West) ("A marriage contracted while either party thereto has a former wife or husband living, except as provided in section six and in chapter two hundred and eight, shall be void"). Furthermore, the record includes a copy of Y-S-'s marriage certificate to another individual that she married on February 12, 2009, in New Hampshire and the petitioner concedes she is remarried. Bigamy is a felony in New Hampshire. See N.H. REV. STAT. ANN. § 639:1 ("A person is guilty of a class B felony if, having a spouse and knowing that he is not legally eligible to marry, he marries another"). Therefore, assuming the petitioner and Y-S- divorced prior to Y-S-'s marriage to another man in February 2009, the petitioner may also be ineligible to file a self-petition if they divorced more than two years before June 4, 2008, two years prior to his filing of his self-petition. See Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) 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.