

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **DEC 10 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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 because the petitioner failed to establish that he entered into the marriage in good faith and his spouse subjected him to battery or extreme cruelty.

On appeal, the petitioner submits a statement and 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.

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.

* * *

(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 native of Brazil and a citizen of Italy who was admitted to the United States as a visitor under the visa waiver program on October 1, 2005. The petitioner married A-T-, a U.S. citizen, on September [REDACTED] in New Jersey. The petitioner filed the instant Form I-360 on September 9, 2013 based on his marriage to A-T-. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and the requisite battery or extreme cruelty. The petitioner responded to the RFEs 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.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his initial statement, the petitioner recounted that he first met A-T- in 2008 at his workplace where she was a secretary. He stated that they began dating and then moved in together. The petitioner recounted that they wed after one year of living together. The petitioner did not probatively describe his courtship with A-T-, their wedding and joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner submitted letters from his friends, [REDACTED] who briefly discussed the petitioner's marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. [REDACTED] stated that the petitioner met A-T- in 2010 and "he liked her so much." [REDACTED] recounted in a one-sentence statement that the petitioner dated and then fell in love with A-T-. Neither of the petitioner's friends discussed their interactions with the couple or otherwise established their personal knowledge of the relationship.

The petitioner submitted the following relevant evidence: photographs; car insurance identification cards; credit card statements; and bank statements. The car insurance identification cards reflect that the petitioner and A-T- had a joint policy. However, the bank statements show a joint checking account with little account transaction activity and the credit card statements show only individual accounts in the petitioner's and A-T-'s respective names. The petitioner indicated that the photographs of himself and A-T- were taken at his home, church, wedding and honeymoon. However, the photographs are undated and the petitioner failed to provide a probative description of his courtship, wedding and shared residence with A-T- in his statement. The director correctly concluded that the preponderance of the evidence failed to demonstrate that the petitioner entered his marriage in good faith.

On appeal, the petitioner asserts that he married A-T- in good faith. He states that he does not have additional evidence of their joint finances because of his immigration status. The petitioner contends that A-T- had control over his wages and she paid their rent and other expenses in cash. 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." 8 C.F.R. § 204.2(c)(2)(vii).

In this case, however, the petitioner does not provide any detailed, probative information regarding his intentions in marrying his wife. He submits a second personal declaration in which he asserts that he married A-T- because he loved her, they shared things in common and wanted to have a family. The petitioner in his second statement still does not substantively discuss his courtship and marital experiences with A-T-, apart from the alleged abuse. The petitioner submits a letter from his friend, [REDACTED] who briefly discusses the petitioner's marriage, but focuses primarily on the alleged

abuse. Mr. [REDACTED] indicates that he interacted socially with the couple, but he fails to discuss these interactions in probative detail. When considered in the totality, the preponderance of the evidence does not establish that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The record also does not establish that A-T- subjected the petitioner to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his initial statement, the petitioner recounted that after his marriage to A-T-, she became upset frequently, called him names and was controlling. He said on one occasion she became violent and hit him. He stated that on another occasion she threw coffee on him and threatened to kill him. The petitioner's description of the battery and extreme cruelty lacks credible, probative details of the alleged incidents to establish his claim.

The petitioner also submitted a letter dated December 2, 2013 from [REDACTED], M.D., who stated that he diagnosed the petitioner with depression and post-traumatic stress disorder. The petitioner submitted evidence that Dr. [REDACTED] prescribed him sertraline, an anti-depressant. According to Dr. [REDACTED] the petitioner reported that he has been a victim of "severe and unrelenting verbal, emotional and physical abuse by his wife." Dr. [REDACTED] however, speaks only in general terms about the abuse and fails to discuss any specific instances of battery or extreme cruelty.

The petitioner's friends, [REDACTED] also fail to provide credible, probative testimony regarding their knowledge of the alleged abuse. [REDACTED] stated that he witnessed A-T- slap the petitioner prior to their marriage. He recounted that the petitioner told him that after their marriage A-T- used drugs, stole money from him and threatened him with knives. The petitioner, however, claimed that the abuse began only after his marriage to A-T-. In addition, the petitioner did not mention any instances of being threatened with knives or having his money stolen in his initial statement. [REDACTED] stated that the petitioner informed her that A-T- used drugs and would break things in their home. Ms. [REDACTED] claimed that she witnessed A-T- punch the petitioner in the face. The petitioner also did not mention any of these instances in his initial statement. The director correctly determined that the discrepancies between the petitioner's initial personal statement and the supporting statements from his friends draw into question their credibility as probative evidence.

On appeal, the petitioner asserts that he was subjected to battery and extreme cruelty during his marriage. He contends that his personal statement did not contain all of the details of the abuse because he had a difficult time remembering the incidents. The petitioner contends that his omission of certain incidents does not make his claim less credible. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof.

In his case, the petitioner has failed to provide a credible, detailed and probative account of the claimed abuse. In his second personal statement he recounts that A-T- threatened to call immigration authorities and kill him. He also recounts that A-T- hit him, called him names, embarrassed him, stole money from him, sprayed ██████ in his eyes, put laxatives in his food and used drugs. The petitioner in his second statement claims that he was subjected to numerous forms of abuse, but he fails to probatively discuss the specific incidents to provide credibility to his claims. ██████ states that A-T- controlled the petitioner's money and he witnessed A-T- punch the petitioner in his arm and hit him on one occasion. Mr. ██████ states that on another occasion he witnessed A-T- call the petitioner names and pinch his arm. The petitioner's failure to himself provide any probative details of specific incidents of alleged abuse detracts from Mr. ██████ statement as reliable evidence. Accordingly, the petitioner has not established by a preponderance of the evidence that his 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.

Conclusion

On appeal, the petitioner has not established that he entered into marriage in good faith and his spouse subjected him to battery or extreme cruelty. 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.