

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: FEB 27 2014 Office: VERMONT SERVICE CENTER

IN RE: 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)

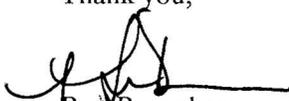
ON BEHALF OF PETITIONER:

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 Acting 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner entered into marriage with his former United States citizen spouse in good faith, and that she battered or subjected him to extreme cruelty during their marriage. On appeal, counsel submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) 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:

(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.

* * *

(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 is a citizen of Nepal who entered the United States as a student on August 26, 2003. The petitioner married S-W-¹, a U.S. citizen, on June 20, 2006. On July 16, 2006, S-W- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The director denied the Form I-130 petition and the corresponding Form I-485, based on the denial of the Form I-130 petition. The petitioner filed a Form I-360 on December 29, 2008. The director denied the petition on February 16, 2010 for failure to establish the requisite battery or extreme cruelty and entry into marriage with S-W- in good faith. The AAO dismissed a subsequent appeal, finding that the petitioner had not demonstrated that his wife subjected him to battery or extreme cruelty during their marriage, and that he married her in good faith. The AAO granted the petitioner's subsequent motion to reconsider, and the AAO affirmed its previous decision dismissing the appeal. The petitioner and his spouse divorced on August 25, 2011. The petitioner filed the instant Form I-360 on January 9, 2012. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty and entry into marriage with S-W- in good faith. The petitioner timely responded with additional evidence, which the director found insufficient and she denied the petition. The petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has not overcome the director's grounds for denial. In addition, beyond the director's decision, the petitioner has not demonstrated a qualifying spousal relationship with a U.S. citizen, and corresponding eligibility for immediate relative classification.²

Good-Faith Entry into the Marriage

De novo review of the evidence submitted below fails to demonstrate that the petitioner married his spouse in good faith. The relevant evidence in the record consists of letters from the petitioner; a letter from his cousin, [REDACTED]; a lease agreement; income tax records; utility invoices; and bank records.

The petitioner stated in a letter that he does not have many documents to demonstrate that he entered into marriage in good faith because he and S-W- spent only a few months together as a married couple. 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

¹ Name withheld to protect the individual's identity.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

relationship. All credible relevant evidence will be considered.” See 8 C.F.R. § 204.2(c)(2)(vii). In the instant case, the petitioner provided letters from himself and a letter from his cousin to establish his good-faith entry into the marriage. The petitioner briefly stated in a letter that he met S-W- in February 2006 while shopping at a mall, and that they went out on several dates. The petitioner declared that he fell in love with S-W-, but ended their relationship when he returned to school in May 2006. The petitioner stated that his bond to S-W- was strengthened by their separation, and he decided not to return to school but to propose to her. He stated that they wed on June 12, 2006. The petitioner does not mention in further detail his courtship, engagement, wedding, or his joint residence and shared experiences with S-W-, apart from the claimed abuse.

stated that he has known the petitioner since the petitioner’s childhood and that the petitioner loved S-W- and wanted a family, but he does not recount in any detail his observations of interactions between the petitioner and S-W-, or describe in detail any social visits or functions with them, or otherwise demonstrate his personal knowledge of the petitioner’s relationship with his former wife, apart from the claimed abuse.

The copies of the bank statements, utility invoices and the residential lease agreement show the names of the petitioner and his former wife. The bank account statements reflect that the account had at most only \$560 and does not indicate that the petitioner and his former wife used the account for shared savings or expenses. The tax returns for 2007 and 2008 are in the name of the petitioner and show his tax status as married filing separately, but they are self-prepared and unaudited and are not accompanied by any evidence that they were actually filed with the Internal Revenue Service (IRS). Furthermore, the tax returns relate to a timeframe after the petitioner’s separation in October 2006 from S-W-. Without any probative account from the petitioner or his cousin regarding the petitioner’s entry into the marriage, a residential lease agreement and documents that show a joint address are not sufficient to establish the petitioner’s good faith in marrying his former wife. The petitioner only gave a brief account of how he met his former wife, and his courtship and wedding, and does not discuss their shared residence and experiences, apart from the alleged abuse. His cousin did not mention how the petitioner first met S-W-, or provide any detailed information about social engagements or visits with the petitioner and his former wife in which to demonstrate the petitioner’s good faith in marrying his former wife.

On appeal, counsel cites court decisions discussing the requirement under immigration laws of entering into the marriage in good faith.³ Counsel cites *U.S. v. Budd*, 144 U.S. 154, 166 (1892), to

³ Counsel cites *Lutwak v. U.S.*, 344 U.S. 604 (1953), *Adams v. Howerton*, 673 F.2d 1036 (9th Cir. 1982), *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975), *Matter of McKee*, 17 I&N Dec. 332 (BIA 1980), *Matter of H-*, 9 I&N Dec. 640 (BIA 1962), *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966), and *Matter of Boromand*, 17 I&N Dec. 450 (BIA 1980).

assert that the affidavits from the petitioner and his cousin demonstrate that the petitioner's marriage is bona fide because sworn testimony is presumed truthful unless rebutted or inherently unbelievable. The facts and law applicable in *Budd*, an action to annul a timber-land patent, are not relevant to the instant case. In making a decision on a self-petition the determination of what evidence is credible and the weight to be given that evidence lies within the sole discretion of U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The director did not error in her determination that the petitioner failed to demonstrate that he married his former wife in good faith. The petitioner only briefly recounted how he first met his former wife, did not describe in any detail their courtship and wedding, and did not discuss their joint residence, or any of their shared experiences, apart from the alleged abuse. The petitioner's cousin also did not discuss in any probative detail his observations of the petitioner and S-W-, or mention any visits or functions with them. Without a probative description from the petitioner or his cousin of the petitioner's relationship with his former wife, the relevant evidence in the record does not demonstrate the petitioner's good faith in marrying S-W-.

Counsel contends that USCIS erred by failing to consider the lease agreement and the 2008 tax return, by discounting the bank statements and utility bills, and by failing to consider the totality of the relevant evidence. Even though the director did not explicitly mention the lease agreement and 2008 tax return in her decision, she did not error in her conclusion that the petitioner did not establish that he entered into marriage with S-W- in good faith. We have discussed the deficiencies in the tax returns and bank statements. In the absence of detailed probative information from the petitioner or his cousin of the petitioner's relationship with his former wife, when the relevant evidence is viewed together, it does not demonstrate that the petitioner entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The relevant evidence in the record consists of letters from the petitioner; a letter from [REDACTED] his cousin; a letter from his doctor; psychological evaluations; a statement of medical services; paternity test results; and photographs.

The petitioner stated in his letters that he was devastated when his former wife told him that she was pregnant with a child from another man. The petitioner declared that he has depression and anxiety because of his former wife's deception and would not have married her if he knew of her pregnancy. He stated that he is humiliated, and society here and in Nepal will look down on him due to the stigma of his failed marriage and his former wife's pregnancy. The petitioner stated that S-W- took advantage of his non-citizen status by forcing him to pay for their divorce and threatening to make him pay child support. The petitioner asserted that he has therapy sessions and takes medication for depression, and has lost interest in his career, education, and social activities. [REDACTED] stated that he noticed the petitioner's discontent shortly after his marriage, and that the petitioner told him about his former

wife's pregnancy by another man and that he was harmed by her conduct. His cousin declared that in Nepal a failed marriage due to a wife's pregnancy by another man is considered a social stigma.

Medical records reflect that in November 2008 the petitioner sought assistance for depression, and was treated for depression and panic attacks in 2011, 2012, and 2013. Evaluations from [REDACTED], a doctor and licensed professional counselor, indicated that the petitioner feels that he will lose face with society and his family due to his wife's pregnancy and deception. [REDACTED] stated that the petitioner has clinical depression. Congress's intent in allowing a showing of either battery or extreme cruelty was to protect survivors of domestic violence. *See* H.R. Rep. No. 103-395, at 37-38. Extreme cruelty is to be viewed in the context of domestic violence, and it includes acts that may not initially appear violent but that are part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(vi). While the record shows that the petitioner has clinical depression and was deceived by his wife's decision not to inform him that she was pregnant with another man's child prior to their marriage, her nonviolent behavior is not comparable to psychological or sexual abuse, or to the type of abuse that is defined as extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel cites *Hernandez v. Ashcroft*, 345 F.3d 824, 839 (9th Cir. 2003), to argue that Congress intended the term extreme cruelty to include non-physical aspects of domestic violence. Counsel indicates that S-W-'s deception in marrying the petitioner while pregnant with a child from another man subjected the petitioner to non-physical abuse that was an act of extreme cruelty that caused the petitioner's depression, anxiety, and panic attacks. Counsel asserts that Congress did not intend to have the determination of what constitutes domestic violence to be within the sole discretion of immigration judges or the Service. *Id.* at 835. The question of whether a determination of extreme cruelty is subject to judicial review is not at issue in this proceeding.

Congress required a showing of extreme cruelty to ensure that protection was afforded against the extreme concept of domestic violence, rather than mere unkindness. *Id.* at 840. The petitioner has not described any threatening or controlling behavior from his wife, and S-W-'s nonviolent, deceptive act of marrying the petitioner while pregnant with a child from another man is not comparable to the "extreme concept of domestic violence" as noted in *Hernandez*.

Counsel argues that the director mischaracterized the abuse to the petitioner as "mental anguish" that is associated with marital difficulties. Counsel contends that the petitioner was the victim of paternity fraud. Counsel cites a law review article to demonstrate that society regards paternity fraud as an act of extreme cruelty, and contends that even though paternity fraud does not involve domestic violence, paternity fraud should still be considered an act of extreme cruelty.⁴ Congress's intent in allowing a showing of either battery or extreme cruelty was to protect survivors of domestic violence. *See* H.R. Rep. No. 103-395, at 37-38. Counsel has failed to demonstrate that the petitioner was a victim of "paternity fraud" or that paternity fraud is an act of extreme cruelty.

⁴ Counsel cites Leslie Joan Harris, *A New Paternity Law for the Twenty-First Century: Of Biology, Social Function, Children's Interests, and Betrayal*, 44 Willamette L. Rev. 297, 318-19 (2007).

Counsel argues that the director failed to discuss the petitioner's mental health records and his cousin's affidavit. In adjudicating the petition, although the director did not mention the affidavit from the petitioner's cousin, she acknowledged that the petitioner had depression and lichen planus (a skin condition) due to S-W-'s infidelity, but concluded that the relevant evidence did not establish that S-W- "intentionally attempted to control" the petitioner through psychological means. Counsel argues that the Act requires only that the petitioner establish that he was battered or subjected to extreme cruelty during his marriage, and that the director erred in requiring S-W- to act with the intent to control in order to establish extreme cruelty. In this case, the director's comment did not impose an additional requirement or a heightened standard of proof and even though she did not mention each item of the relevant evidence, we find no error in her determination. In this case, the preponderance of the relevant evidence does not demonstrate that S-W- subjected the petitioner 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

Beyond the director's decision, the petitioner has also failed to establish a qualifying spousal relationship with his former wife. The petitioner filed the instant Form I-360 on January 9, 2012. The divorce decree in the record reflects that the petitioner divorced his wife on August 25, 2011. 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). The petitioner has not demonstrated the requisite battery or extreme cruelty and the connection between his divorce and such battery or extreme cruelty. Accordingly, the petitioner has not demonstrated that he had a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification based on such a relationship, as required by 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. He has not demonstrated that he entered into marriage with his wife in good faith, and that she subjected him to battery or extreme cruelty during their marriage. Beyond the director's decision, he has also not established that he had a qualifying spousal relationship with her, and was eligible for immediate relative classification based on that relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on all four of these grounds.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.