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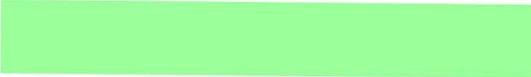
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

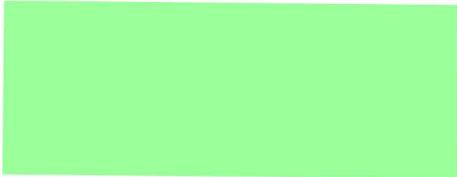


Date: **JAN 30 2014** Office: VERMONT SERVICE CENTER File: 

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,

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

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 a United States citizen.

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

On appeal, the petitioner, through counsel, submits a brief.

Relevant Law and Regulations

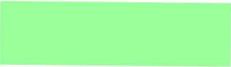
Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, 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, a citizen of Romania, married K-H-¹, a United States citizen, on [REDACTED] 2010, in Salt Lake City, Utah. The two were divorced on [REDACTED] 2011. He last entered the United States on June 15, 2010 as a B-2 visitor. The petitioner filed the instant Form I-360 on July 20, 2012. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty and entry into marriage with K-H- in good faith. 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.

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 as supplemented, the petitioner has overcome one but not all of the director's grounds for denial. The appeal will be dismissed for the following reasons. Beyond the director's decision, the petitioner has also not established that he is eligible for immediate relative classification based upon a qualifying relationship with a U.S. citizen.²

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former wife did not subject him to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavit, letters from family and friends, photographs showing injuries on the petitioner's face and neck, and two letters from [REDACTED] Licensed Clinical Social Worker (LCSW) with [REDACTED]. In his first letter, clinical therapist [REDACTED] stated that the petitioner and K-H- were referred to him by their LDS bishop for marital psychotherapy. Mr. [REDACTED] explained that the petitioner was the only participant in the sessions despite efforts to involve K-H-. Mr. [REDACTED] evaluated the petitioner and concluded that the petitioner met the "DSM IV criteria for major depressive episode, but not a full major depressive disorder." In his second letter, Mr. [REDACTED] repeated his earlier statements and summarized the events of the four psychotherapy sessions that he conducted with the petitioner. While we do not question Mr. [REDACTED] expertise, he does not provide further, substantive information demonstrating that the actions of K-H- constituted battery and/or extreme cruelty. Likewise, the photographs also failed to establish that the petitioner was battered by K-H-. There is no indication from the photographs alone that any of the red marks resulted from wounds inflicted on the petitioner by K-H- as claimed, and the submitted letters fail to establish a connection between the scars and the claimed abuse.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In his affidavit, the petitioner

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).

stated that K-H- was unfaithful and when he confronted her about it, she punched him on the nose. He stated that he did not call the police but did not provide any further probative details about this incident. He stated that she called him names and once attacked him with a hanger when he refused to agree to a divorce. He recounted that she became pregnant with another man's child and this destroyed him emotionally, physically, and mentally but he did not provide substantive information about any of the claimed incidents of abuse. The petitioner's statements did not demonstrate that his former wife's treatment of him involved actual or 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 her letter, [REDACTED] stated that she resided in the same house with the petitioner and K-H- from December 2010 and March 2011. She explained that K-H- is a friend of her younger sister and was living with them. Ms. [REDACTED] stated that she could hear K-H- yelling in the evenings more nights than not, and that K-H- always seemed unhappy. In his letter, [REDACTED] K-H-'s foster parent, stated that the petitioner and K-H- frequently argued loudly and that K-H- was not happy about their marriage. [REDACTED] stated that things went "terribly wrong" in the petitioner's marriage. None of the letters provided any probative details about any specific incidents of abuse. In response to the RFE, the petitioner submitted letters from his brother, [REDACTED] and friend [REDACTED]. In his letter, [REDACTED] stated that the petitioner suspected that K-H- was having an affair. Mr. [REDACTED] described two occasions when the petitioner claimed that K-H- attacked him. Mr. [REDACTED] did not describe whether specific incidents of abuse were personally witnessed or otherwise establish his knowledge of any abuse. Ms. [REDACTED] stated that she provided counsel to both the petitioner and K-H- but that her communication with K-H- broke down when the petitioner and K-H- began having marital problems. She stated that the petitioner confided in her that the two were always fighting and that K-H- refused to get counseling. Ms. [REDACTED] further stated that she once noticed scratches on the petitioner's arm and the side of his face that the petitioner claimed were from when K-H- attacked him. Again, neither Mr. [REDACTED] nor Ms. [REDACTED] appeared to have witnessed any of the claimed battery or extreme cruelty and did not describe any incidents of abuse in probative detail.

On appeal, counsel asserts that the record shows that K-H- lied to the petitioner about "several critical items both before and after their marriage in December 2010." He asserts that the petitioner was subjected to both physical and psychological harm by K-H- but fails to articulate how the relevant evidence demonstrates that any specific behaviors of the petitioner's wife constituted battery or extreme cruelty. The petitioner's affidavit, letters from his brother and friends, the letters from [REDACTED] did not contain sufficient, probative information to establish the claimed abuse. Accordingly, the petitioner has not established that his former 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.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

A petitioner who is divorced must file his self-petition within two years of the divorce date and demonstrate a causal connection between the divorce and any battery or extreme cruelty. 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.

Good-Faith Entry into the Marriage

The director incorrectly determined that the petitioner failed to establish that he married K-H- in good faith. The record contains: the petitioner's affidavit; letters from family and friends; a Verizon statement dated after the petitioner and K-H- separated; 2010 electronically filed U.S. federal income tax return; copies of letters from the petitioner to K-H-; a copy of a Valentine's Day card from K-H- to the petitioner; copies of ticket stubs for movies and sporting events; and photographs of the petitioner and K-H- on their wedding day and various other occasions. The director correctly addressed the deficiencies of the Verizon bill and ticket stubs but failed to take into consideration the remaining evidence. The mail correspondence between the petitioner and the K-H-, though prior to their engagement, indicated that the petitioner's interest in a relationship K-H- was in good faith. The photographs submitted show the couple at various events together.

Nonetheless, 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 his affidavit, the petitioner stated that he was introduced to K-H- by a mutual friend. He stated that they began to date and kept in touch while he was away on an [REDACTED] mission for approximately two years. He stated that when he returned, the two resumed their relationship, became serious, and were married after six months. The petitioner credibly explained that he married K-H- because he thought she was the girl he had fallen in love with prior to leaving for his mission. The petitioner's brother, [REDACTED] stated that he witnessed the petitioner's relationship with K-H- since its beginning in 2007. [REDACTED] stated that she spoke extensively to the petitioner and K-H- before and after the wedding. Ms. [REDACTED] recounted encouraging them to take some time before getting married but that both assured her they were in love and ready to start their family. [REDACTED] K-H-'s foster parent, recounted that when the two lived in his basement, the petitioner seemed like an attentive newlywed buying little gifts for K-H-.

De novo review of all of the relevant evidence submitted below establishes the petitioner's good-faith entry into the marriage. Here, the petitioner provided credible, probative and detailed information demonstrating his good-faith intent upon marrying K-H-. Additionally, the petitioner submitted letters from family and friends who attested to the petitioner's good-faith marriage with K-H- and other probative evidence relevant to demonstrating the petitioner's good faith intent. When viewed in the totality, the preponderance of the relevant evidence submitted below demonstrates that the petitioner entered into marriage with K-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has demonstrated that he entered into marriage with his former wife in good faith but he has not demonstrated that he was subjected to battery or extreme cruelty by her during their marriage and he consequently cannot establish his eligibility for immediate relative classification based upon a qualifying relationship with a U.S. citizen. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.