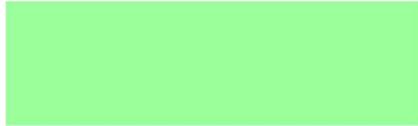
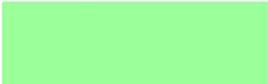


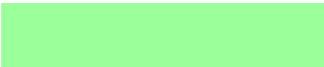


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 18 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:

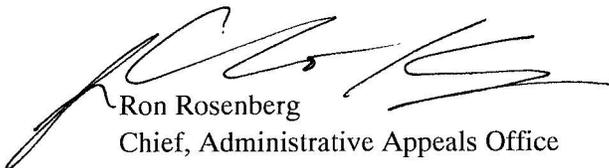
SELF-REPRESENTED

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“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 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 a U.S. citizen.

The director denied the petition because the petitioner failed to demonstrate his entry into marriage with his former wife in good faith and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits additional evidence.

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).

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:

Evidence for a spousal self-petition –

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mali who claims that he last entered the United States on December 29, 2002 as a visitor. The petitioner married F-B-, a U.S. citizen, in New York on February 25, 2011. Their marriage terminated in a divorce on May 1, 2013. The petitioner filed the instant petition on

March 26, 2012. The director subsequently issued two Requests for Evidence (RFEs) 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.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The evidence submitted below and on appeal does not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

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 affidavit, the petitioner recounted that he met F-B- in April 2010 on the street in New York City. He stated that they started dating and became engaged in December 2010. The petitioner recounted that they found an apartment and moved in together after their marriage on February 25, 2011. The petitioner did not probatively describe his courtship with his former wife, their wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

In response to the first RFE, the petitioner submitted letters from his friends, [REDACTED]

[REDACTED] focused on the alleged abuse and did not provide any information on the petitioner's good-faith entry into the marriage. The petitioner's other friends claimed to have had frequent contact with the petitioner and F-B- as a married couple, but none of them described any particular visit or social occasion with the couple in probative detail. Nor do they discuss their interactions with the couple in any detail to establish their personal knowledge of the relationship.

In response to both RFEs, the petitioner submitted the following relevant documentation: a rental agreement signed by the couple and rent receipts; the petitioner's life insurance application and policy; a cable bill addressed to the couple; bank and credit card statements reflecting the couple's joint accounts; sales receipts addressed to the couple; and photographs of the couple. The life insurance policy names F-B- as the beneficiary, but it was issued after the couple's separation. Several of the bank statements reflecting that the couple had a joint account were also issued after the couple separated. The photographs are undated and taken at unspecified locations. While these documents reflect that the petitioner and F-B- shared some joint finances, the affidavits submitted below failed to provide any probative information regarding the petitioner's marriage to F-B-. The director correctly determined that the preponderance of the evidence submitted below did not establish the petitioner's good-faith entry into the marriage.

On appeal, the petitioner submits additional statements from his friends, [REDACTED] and [REDACTED]. Ms. [REDACTED] stated that she often saw the couple socially at their friends' homes and at community events. Mr. [REDACTED] stated that he socialized with the couple regularly and went out to dinner with them. However, neither of the petitioner's friends describes any particular event or social occasion with the couple in detail.

On appeal, the petitioner asserts that he entered the marriage in good faith and not solely for the purpose of obtaining immigration benefits. The director noted numerous inconsistencies in dates mentioned in the petitioner's prior affidavit and the petitioner contends on appeal that the inconsistencies stemmed from his lack of English proficiency. The petitioner does not, however, overcome the lack of sufficient evidence to establish his good-faith entry into the marriage. The petitioner in his self-affidavits failed to discuss his courtship with his former wife, their wedding ceremony, joint residence and shared experiences, apart from the alleged abuse. The psychological evaluation and statements from the petitioner's friends also fail to provide any probative information of the petitioner's marital intentions. Accordingly, the petitioner has failed to demonstrate that he 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

We also find no error in the director's determination that the petitioner was not subjected to battery or extreme cruelty. The petitioner stated in his initial affidavit, submitted in response to the second RFE, that on June 15, 2011, F-B- deposited a fraudulent check in their joint bank account. He recounted that F-B- initially denied having deposited the check, but when he threatened to call the police, she finally confessed. The petitioner stated that in December 2011, his wife poured cold water over him and punched him when he did not respond to her during his evening prayers. He recounted that F-B- begged him not to call the police and stated that she was sorry and it would not happen again. The petitioner stated that on February 26, 2012, F-B- became upset because he would not purchase a vehicle for her. He stated that she threw an object that hit him on his right knee. The petitioner stated that on February 29, 2012, he and F-B- had another argument about purchasing a car and F-B- started throwing frying pans at him. The petitioner stated that he fled the home and moved into a men's shelter and then to [REDACTED] home.

The director correctly determined that the record contains inconsistent accounts of the alleged abuse. The petitioner filed for divorce in New York based on cruel and inhuman treatment. In his divorce petition he alleged that during the June 15, 2011 incident when he questioned F-B- about depositing a fraudulent check she became very aggressive, called him names, and physically assaulted him by slapping him on his face. He stated that on February 29, 2012, when he and F-B- had an argument about the purchase of a new vehicle, F-B- became physically abusive and punched the petitioner on his face and body. The petitioner's description of these incidents is inconsistent with his initial affidavit in which he indicated that there was no violence during the June 15, 2011 incident and on February 29, 2012 he fled the home before F-B- could physically harm him.

The psychological evaluation from Dr. [REDACTED] reiterates the incidents the petitioner alleges in his affidavit. Dr. [REDACTED] opined that the petitioner developed a Major Depressive Disorder and Posttraumatic Stress Disorder (PTSD) because of the alleged abuse. However, the psychological evaluation contains an inconsistency in the description of the December 2011 incident, in which the petitioner alleged that F-B- threw water on him and hit him in the head during his evening prayers. The petitioner claimed in his initial affidavit that he did not call the police after this incident because F-B- begged him not to call the police and said that she was very sorry and it would not happen again. He stated in his initial affidavit that he now believes that F-B-'s apology was not sincere and she only

apologized to persuade him not to call the police. During the psychological evaluation, however, the petitioner informed Dr. [REDACTED] that the reason he did not call the police after this incident was because he was afraid that he would be detained due to his immigration status.

In response to the RFEs, the petitioner submitted a copy of a petition he filed in the Family Court of New York for a protection order against F-B- and evidence that he resided in a men's shelter. In his affidavit, the petitioner stated that three days after residing at the shelter, he moved to his friend's home. The men's shelter records he submitted reflect that he resided there from March 1, 2012 until March 3, 2012. However, in the protection order petition, dated March 27, 2012, he stated that he was still residing in the shelter. The petitioner has not provided evidence that the protection order was granted, or discussed the outcome of the petition in his initial affidavit or the affidavit he submitted on appeal.

The petitioner also submitted his medical records in response to the second RFE. The petitioner's medical records show that he was treated for pain in his lower leg joint on February 26, 2012, diarrhea and weight loss on March 7, 2012, gastroenteritis and colitis on March 8, 2012, and knee pain on July 2, 2013. The intake interview notes from the petitioner's February 26, 2012 hospital visit do not mention the petitioner's wife or reference physical abuse or domestic violence as the cause of his injury. The intake interview notes for the petitioner's March 7, 2012 hospital visit provide that the petitioner stated that he had a fight with his wife and she kicked him out of their apartment. He stated that he had been sleeping in a shelter for the previous five days and may have gotten food poisoning there. The petitioner's statements do not indicate that he was battered or subjected to extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's claim of residing in the shelter at the time of his March 7, 2012 hospital visit and his March 27, 2012 petition for an order of protection is also inconsistent with the shelter records, which show that the petitioner departed the shelter on March 3, 2012. The medical records for the petitioner's July 2, 2013 hospital visit reflect that during his intake interview he stated that he had been having knee pain after his wife hit him with a pot. The petitioner stated that he resides with his wife and is a victim of domestic violence. The petitioner, however, recounted in his initial affidavit that he separated from his wife in March 2012. The brief intake interview notes also do not provide a probative description of the alleged incident of physical abuse.

The petitioner also submitted in response to the RFEs, letters from his friends, [REDACTED]. The petitioner's friends all assert that F-B- was physically abusive. The director correctly determined that none of the petitioner's friends describe their knowledge of any specific incident of abuse in probative detail. The letters from [REDACTED] and [REDACTED] submitted on appeal also do not provide probative information of the alleged abuse. Ms. [REDACTED] and Mr. [REDACTED] stated that the petitioner told them that F-B- physically abused him and called him names. However, neither of them provides a substantive description of their contemporaneous observations of the effects of the alleged abuse on the petitioner.

On appeal, the petitioner asserts that the inconsistencies and discrepancies in his statements and medical records are due to his lack of English proficiency. He contends that despite these issues, the evidence shows that he was subjected to battery or extreme cruelty. The discrepancies in the relevant evidence go beyond a mere confusion in dates or an error in translation. A full review of the evidence reflects that the petitioner has failed to provide a consistent, credible account of the specific instances of F-B-'s abuse that he claims he was subjected to during his marriage. The statements from his friends also do

not provide specific details of the alleged abuse that they claim to have had knowledge of, or describe their observations of the effects of the abuse on the petitioner. Accordingly, the petitioner has not established by a preponderance of the evidence 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.

Conclusion

On appeal, the petitioner has not demonstrated that he entered into marriage with his former wife in good faith and that she subjected him to battery or extreme cruelty during their marriage. 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.