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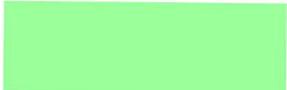


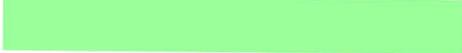
U.S. Citizenship
and Immigration
Services



Date: **JUL 18 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)

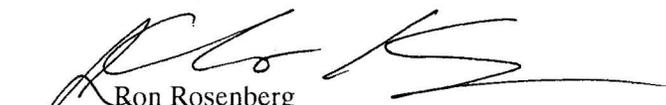
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 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 the 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 memorandum of law.

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, 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 the Dominican Republic, entered the United States on May 21, 2009 as the nonimmigrant fiancé of D-D-¹, a United States citizen. On July 4, 2009 he married D-D- in New Jersey, and they divorced on July 8, 2010. The petitioner filed the instant Form I-360 on September 23, 2011. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty and the petitioner's entry into the marriage with his former spouse 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.

We review 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 on appeal, the petitioner has not overcome all of the director's grounds for denial. Beyond the director's decision, the petitioner has also not established that he had a qualifying relationship with his former spouse and is eligible for immediate relative classification based upon that relationship.² The appeal will be dismissed for the following reasons.

Good Faith Entry into the Marriage

The relevant evidence submitted below and on appeal demonstrates the petitioner's entry into his marriage to his former spouse in good faith. In the petitioner's first affidavit, dated September 2, 2011, he provided detailed, credible testimony of how he met his former spouse, their courtship, engagement, wedding ceremony, joint residence and shared experiences prior to the onset of the claimed abuse. The petitioner recalled that he first met D-D- in March 2006 when she was a guest at the resort where he worked in the Dominican Republic. When she returned in August 2006, they quickly became reacquainted and spent time together daily, she introduced him to her daughter and parents and they spent the final two nights of her vacation together. He explained that they communicated daily thereafter via telephone and electronically until she returned in December 2006 when they stayed together in one room, snuck away for long walks and conversation, and expressed that they were falling in love with one another. They continued to communicate daily after she left for the United States, and when she returned again in April 2007, they stayed together at another resort, he took the entire week off to spend with her, and he, D-D-, her daughter and her parents all traveled an hour by car to meet his immediate and extended family. He described the joy he felt sharing a large meal with both families, the acceptance of the relationship among them all, and how they spent the rest of the day taking photographs before returning to the resort that night. The petitioner explained that the experience made him realize they had a viable future together, and before parting ways again the couple expressed their mutual love to each other and spoke of getting engaged.

The petitioner recalled that he worked hard over the next several months to save money for an engagement ring, and described how they were formally engaged when D-D- returned to the Dominican Republic in July 2007 and they celebrated together and with her daughter and parents. 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. sup. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

petitioner explained that before D-D- departed, she told him she would contact an attorney and apply for a fiancé visa so they could reside in the United States as husband and wife. The petitioner stated that D-D- visited him several times thereafter, he would take a week off work each time, and he ultimately lost his job as a result. He recalled that D-D-'s daughter began calling him "Daddy," and he started treating her as if she were his own. The petitioner secured employment at another resort in late 2008, had his fiancé visa interview in April 2009, and arrived in New Jersey on May 21, 2009 looking forward to beginning his new life with the woman he loved. The petitioner described the small home wedding ceremony they had on July 4, 2009, including those among D-D-'s family in attendance, and how they celebrated afterwards.

In the petitioner's supplemental affidavit, dated March 27, 2013, he identified D-D-'s family members by name who were present at the wedding ceremony and wrote that they also invited his cousin, [REDACTED] who lived in New York. Mr. [REDACTED] described meeting the petitioner and D-D- before their wedding and his observations of the petitioner's excitement and joy in anticipation of marriage and building a life in the United States with the woman he loved. He recalled that shortly after marrying, the petitioner called him with concerns about changes in D-D-'s behavior and treatment of him. On one occasion, the petitioner called Mr. [REDACTED] to pick him up and he drove him to stay with a relative. Mr. [REDACTED] stated that in 2011, though the petitioner was by then divorced from D-D-, it was clear that he missed her very much, was still in love, and asked for a recommendation for a florist to deliver flowers to D-D-'s home.

The director determined the petitioner did not marry his former spouse in good faith, in part, because the petitioner's 2010 income tax return was filed individually and did not demonstrate a comingling of assets. The petitioner's individual return, filed after his separation from D-D-, is consistent with his statements that she refused to help him obtain employment authorization and secure employment during their marriage.

A full review of the relevant evidence submitted establishes that the petitioner married his former spouse in good faith. The petitioner has submitted detailed, credible affidavits of his good-faith entry into the marriage and numerous photographs of himself and his spouse together as a couple over their three-year courtship and at their wedding. When viewed in the totality, the preponderance of the evidence demonstrates that the petitioner entered into marriage with his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

Although the petitioner has demonstrated his good-faith in marrying D-D-, he has failed to establish that she subjected him to battery or extreme cruelty. In addition to his and his cousin's affidavits, the petitioner submitted below a final judgment of divorce from his former spouse, along with the petitioner's related answer and counterclaims.

In the petitioner's first affidavit, dated September 2, 2011, he stated that D-D- began to change shortly after they married and filed his adjustment of status and employment authorization applications. She initially did not want him to work without authorization, but then accused him of being lazy, which hurt his pride and embarrassed him when she did so in front of her daughter and parents. She would

also yell at him for not getting a job but then refuse to help or drive him to potential workplaces. The petitioner explained that in July 2009, D-D- began blaming him for increased food and utilities expenses and complained about the cost of his immigration-related applications. As a result, he reduced his use of electricity and the telephone. D-D- soon told the petitioner that marrying him was a mistake. Her daughter began to treat him disrespectfully as well and D-D- did not correct her.

The petitioner recalled that by late July 2009, D-D- had moved out of their bedroom and began sleeping in her daughter's room. Then in August 2009, D-D- refused to drive the petitioner to a biometrics appointment related to his adjustment of status application which would have enabled him to obtain authorization to work legally. D-D-'s refusal shocked the petitioner as he attributed their marital problems to his lack of employment. The petitioner recalled becoming depressed, losing weight and his appetite, and having difficulty sleeping. He wrote that in August and September 2009, D-D- started coming home late from work and said it was because she did not want to see or spend time with him. She also wanted a divorce and for him to leave the house. The petitioner described being crushed emotionally as he had left his good job, life, family and son in the Dominican Republic to be with D-D-. In October 2009, D-D- gave the petitioner a plane ticket to the Dominican Republic and told him to leave. He stated that she kicked him out of the house the next day after making him quickly sign divorce papers. He explained that his cousin, [REDACTED], picked him up and drove him to his aunt's home to stay temporarily. His cousin took him to an immigration office in New York where the petitioner was given an extension and new appointment.

The petitioner recalled that while staying with his aunt he spoke with D-D- almost daily on the phone, they still said "I love you," and she gave him hope of reconciliation. The petitioner secured a maintenance job and when he received his first paycheck he quickly called D-D- to share the news. He then boarded a bus and planned to bring flowers to her, but D-D- refused to see him. He later learned that D-D- had withheld his employment authorization card, but she mailed it to him January 2010 after he confronted her.

In the petitioner's second affidavit, dated March 27, 2013, he repeated the claims in his first and added that he met with a psychologist after the failure of his marriage left him with regular headaches and feelings of insecurity, fears about the future, inability to trust women and deep sadness that his life plans with D-D- had fallen apart. The petitioner's statements do not demonstrate that his former spouse ever battered him, or that her behavior involved 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 psychological evaluation, [REDACTED] Psy.D., stated that test results indicated that the petitioner was experiencing mild to moderate levels of dysphoria and depression as well as moderate to high levels of anxiety. Dr. [REDACTED] concluded that the petitioner's experience indicated that he was abused, neglected and humiliated by his former spouse. While we do not question Dr. [REDACTED] professional opinion, her assessment conveys the petitioner's statements during his interview with her and provides no further, probative information regarding the claimed abuse.

In his affidavit, Mr. [REDACTED] the petitioner's cousin, recalled telephone conversations in which the petitioner told him of D-D-'s refusal to take him to apply for jobs while also complaining that he was not working, and of later driving him to Mr. [REDACTED] mother's home after he was kicked out by D-D-.

The petitioner told him about D-D-'s refusal to take him to his biometrics appointment, and Mr. [REDACTED] took him to another immigration office for resolution. Mr. [REDACTED] does not indicate that the petitioner was battered, threatened with violence, psychological or sexual abuse, or subjected to other conduct constituting extreme cruelty as defined in the regulation.

On appeal, counsel asserts that the director erred in minimizing the psychological impact that D-D-'s behavior had on the petitioner as no more than would be expected from "any broken marriage between two different individuals with different moral or cultural standards." The director clearly mischaracterized the relevant evidence of D-D-'s treatment of the petitioner, however, we find no error in her ultimate determination that the record did not establish the requisite battery or extreme cruelty.

Counsel further contends that while D-D- initially filed for divorce against the petitioner, the petitioner counter-claimed with extreme cruelty as a cause of action on which ground the divorce was granted. However, a second counter claim was filed by the petitioner on the ground of irreconcilable differences, and the final judgment does not identify on which cause(s) of action the divorce was ultimately granted. Even if the court had specified that the marriage was dissolved on the ground of extreme cruelty, that order would not be binding on the determination of battery or extreme cruelty in these proceedings. Extreme cruelty as a ground for divorce is defined in the New Jersey Statutes as "any physical or mental cruelty which endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant." N.J. Stat. Ann. § 2A:34-2(c) (West 2007). This definition differs significantly from the description of the term battery or extreme cruelty in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In addition, a state court's ruling on the dissolution of an alien's marriage may be relevant, but is never binding on U.S. Citizenship and Immigration Services (USCIS) determination of the alien's eligibility for immigrant classification under section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The affidavits of the petitioner and his cousin and Dr. [REDACTED]'s assessment show that the petitioner's mental health was negatively impacted by D-D-'s actions and the breakdown of their marriage. The preponderance of the evidence does not, however, establish that the petitioner's former spouse subjected him to battery or extreme cruelty during their marriage. The evidence does not demonstrate that the petitioner's former spouse ever battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not shown that his former spouse 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

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.

Conclusion

On appeal, the petitioner has established that he entered into the marriage with his former spouse in good faith. The findings by the director to the contrary are withdrawn. The petitioner has not, however, demonstrated that he was subjected to battery or extreme cruelty by his former spouse during their marriage. Beyond the director's decision, the petitioner has also not established a qualifying relationship with his former spouse and his corresponding eligibility for immediate relative classification based on such a relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these three grounds.

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.