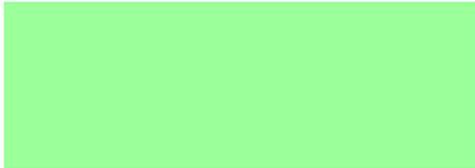
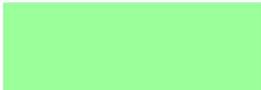


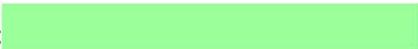


U.S. Citizenship
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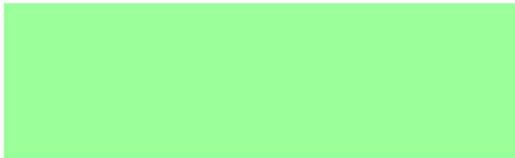


Date: **JUL 30 2014** Office: VERMONT SERVICE CENTER File: 

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:

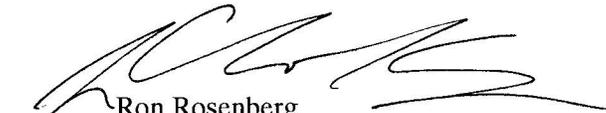


INSTRUCTIONS:

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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and a statement from the petitioner.

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).

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.

* * *

(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 the Philippines who claims he last entered the United States on June 7, 2000 as a nonimmigrant visitor. The petitioner married his second wife, M-M-, a U.S. Citizen on March 15, 2011 in [REDACTED] California. The petitioner filed the instant Form I-360 on June 29, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and his wife's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

We conduct appellate review on a *de novo* basis. 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. Counsel's claims and the additional evidence submitted on appeal do not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

A full review of the record fails to establish that the petitioner married his second spouse in good faith. In his initial statement, the petitioner recounted that he separated from his first wife in 2010 and their marriage terminated in divorce in February 2011. He stated that in 2010 he met M-M- through his friends during a get together in Los Angeles. The petitioner recounted that he dated M-M- for six months and they wed on March 15, 2011. He stated that he and M-M- rented a room in a house located in [REDACTED] California after their marriage. In the RFE, the director stated that other evidence in the record indicated that the petitioner lived with M-M- at an apartment in [REDACTED], California after their marriage.

In response to the RFE, the petitioner submitted other evidence to explain the discrepancy in the address of his residence with M-M-. The petitioner also submitted below a psychological evaluation from Dr. [REDACTED] and Dr. [REDACTED], which provide that the petitioner stated he met M-M- in September 2010 through his "permanent resident relatives." The director determined that this information is inconsistent with the petitioner's claim that he first met M-M- when he went to a comedy club with his friends.

The petitioner submitted the following relevant documentation: a joint automobile insurance policy; telephone and utility bills addressed to the couple; a church registration letter addressed to the couple; life insurance policies for the couple; three cards addressed to the couple; and seven photographs of the couple taken at one, unidentified location. While these documents reflect that the petitioner and M-M- at some point resided together and shared some joint finances, the petitioner failed to provide a credible, probative account of how he first met M-M-, their courtship, wedding ceremony, joint residence and shared experiences. 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 a declaration, which he states gives a timeline of his relationship with M-M-. The petitioner reiterates several of the statements he made in response to the RFE. The petitioner asserts that during their separation M-M- took their photographs and the cards from their wedding ceremony. He states that he does not have evidence of financial assets with M-M- because she had poor credit.

On appeal, counsel asserts that the petitioner only has limited documentation of the bona fides of his marriage to M-M-, but that U.S. Citizenship and Immigration Services (USCIS) must consider "any credible evidence." Counsel further asserts that the inconsistencies in the petitioner's statements regarding his residence with M-M- do not necessarily indicate that the petitioner's marriage was a sham. For self-petitioning abused spouses and children, the statute prescribes an evidentiary standard, which mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). See also 8 C.F.R. §§ 103.2(b)(2)(iii);

204.2(c)(2)(i). This evidentiary standard is not equivalent to the petitioner's burden of proof. 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 this case, the petitioner has addressed the reason for his limited financial documentation, but he has failed to provide a consistent, credible and probative account of how he first met M-M-, their courtship, wedding ceremony, joint residence and shared experiences, apart from the claimed abuse. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence that he entered into marriage with his second wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The petitioner has also not established that his former wife subjected him to battery or extreme cruelty. In his initial statement, the petitioner recounted that M-M- had a drug addiction, would insult and threaten him, and was violent on one occasion. The petitioner recounted that on two other occasions, M-M- threw things and called him names. He stated that M-M- refused to attend his immigration interview and he has hypertension and depression because of the stress. In response to the RFE, the petitioner reiterated that M-M- had a drug addiction. He recounted that during their marital arguments, M-M- called him names, threw objects and threatened him. The petitioner failed to provide probative, detailed information about specific instances of battery or extreme cruelty.

In the psychological evaluation, Dr. [REDACTED] and Dr. [REDACTED] diagnosed the petitioner with post-traumatic stress disorder and major depression. The evaluation provides that during the intake interview the petitioner recounted that M-M- argued about their finances, called him names, threatened to harm him, withheld sexual relations from him and abandoned him. The evaluation fails to provide a probative description of the alleged threats and there is no discussion of the battery. The other incidents mentioned in the evaluation do not constitute extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner's former landlord, [REDACTED] stated in his letter that he noticed "marital problems" between the petitioner and M-M- in December 2011. Mr. [REDACTED] stated that his parents told him that they heard the couple having arguments. Mr. [REDACTED]'s statements do not indicate that the petitioner was battered or subjected to extreme cruelty, as that term is defined in the regulation.

In response to the RFE, the petitioner also submitted a letter from his physician, Dr. [REDACTED]. Dr. [REDACTED] stated in her letter, dated September 10, 2013, that the petitioner was recently diagnosed with an elevated serum cholesterol level, LDL, Triglycerides, uric acid, blood sugar and an abnormal liver enzyme. The petitioner indicated on the Form I-360 that he separated from M-M- in February 2012. Dr. [REDACTED]'s letter does not indicate that the petitioner's medical conditions, which she stated were recently diagnosed as of September 2013, were related to the claimed abuse.

On appeal, counsel asserts that M-M- subjected the petitioner to threats and physical abuse during their marriage. He contends that because of the abuse, the petitioner suffered from anxiety and stress, which required treatment from Dr. [REDACTED]. A full review of the relevant evidence shows no error in the director's decision. Dr. [REDACTED] did not diagnose the petitioner with anxiety or stress and did not indicate that his high cholesterol or other medical conditions were related to the claimed abuse. In his statements submitted below, the petitioner did not provide probative, detailed information of any battery or extreme cruelty. On appeal, the petitioner does not further discuss this issue or submit any additional relevant evidence. Accordingly, the petitioner has not established by a preponderance of the evidence that his second 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 failed to establish his entry into marriage with his second wife in good faith and her 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). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.