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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: **MAY 27 2014** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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)

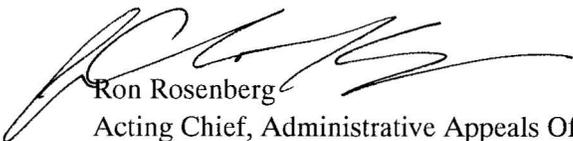
ON BEHALF OF PETITIONER:

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  
Acting 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 on the basis of her determination that the petitioner had failed to establish that he entered into marriage with his ex-wife in good faith, that he resided with her, or that his ex-wife subjected him to battery or extreme cruelty.

On appeal, the petitioner submits additional evidence.

*Applicable Law*

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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 a 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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(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 the Philippines who entered the United States on November 8, 2000, as a nonimmigrant visitor. On October 17, 2009, the petitioner married a U.S. citizen in California. The petitioner and his ex-wife were divorced on February 14, 2011. The petitioner filed the instant Form I-360 on October 4, 2011. The director subsequently issued a Request for Evidence (RFE) of, in pertinent part, the petitioner's good-faith entry into the marriage, that he and his former spouse resided together and that she subjected him to battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director found the petitioner's response to the RFE insufficient and denied the petition accordingly.

The petitioner filed a timely appeal. On appeal, the petitioner submits a brief self-affidavit and copies of previously submitted evidence.

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 for the following reasons.

*Joint Residence*

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner resided with his ex-wife. On the Form I-360, the petitioner claimed that he last lived with his wife on [REDACTED] in California, and that they resided together from October 2009 until August 2010. In his affidavit dated May 3, 2013, the petitioner indicated that his ex-wife moved in with him on their wedding date. In response to the RFE that noted that his lease had been altered to add his ex-wife's name, the petitioner indicated that when he asked the building manager for a new lease, he was given permission to add his ex-wife's name to his copy of the existing lease. In his affidavit submitted on appeal, the petitioner again asserts that the building manager allowed him to add his wife's name to his lease. However, in his affidavits, the petitioner does not describe his and his ex-wife's home or shared residential routines in any detail.

The petitioner submitted affidavits from a friend, [REDACTED] and his father, [REDACTED]. In her affidavit, Ms. [REDACTED] noted that after the petitioner and his wife got married, they would “have dinners from time to time.” She also indicated that she visited the petitioner on one occasion and the house looked disheveled. On that occasion, the petitioner’s ex-wife came home and she and the petitioner got into an argument so Ms. [REDACTED] left. Mr. [REDACTED] stated that he moved in with the petitioner and his ex-wife in May 2010, and that the petitioner’s ex-wife was not present at home as often as before and that he did not see her doing chores around the house. Neither of these affidavits is supported by any probative description of Ms. [REDACTED] or Mr. [REDACTED]’s observations of the petitioner’s and his wife’s shared home or residential routines. As such, they are insufficient to overcome the derogatory information regarding the petitioner’s altered lease, and the apartment manager and his prior neighbor’s statements.

The petitioner also submitted identification and membership cards, AAA cards, warehouse membership cards, health insurance information, and bills listing a shared address. Many of the bills are dated after the petitioner states he and his ex-wife separated. When viewed in the aggregate, the relevant evidence submitted below and on appeal does not demonstrate, by a preponderance of the evidence, that the petitioner resided with his ex-wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Entry into the Marriage in Good Faith*

The relevant evidence submitted below and on appeal also fails to demonstrate the petitioner’s entry into his marriage in good faith. In an affidavit dated May 3, 2013, the petitioner stated that he met his ex-wife at a restaurant. He reported that she gave him her telephone number, they began to date, and he fell in love with her and proposed on Valentine’s Day, 2009. The petitioner stated that they were married on October 17, 2009. The petitioner briefly noted instances in which he and his ex-wife went out together and spent special occasions and holidays together. The petitioner indicated that at first they were happy but things changed in May, 2010. The petitioner did not describe in probative detail how he met his ex-wife, their courtship, engagement, wedding, or any of their shared experiences.

The petitioner also submitted two affidavits from a friend and his father. The petitioner’s friend, [REDACTED] indicated that the petitioner and his ex-wife seemed excited to get married and have a baby, and that after they were married, she had dinner with them from time to time. She also noted that the petitioner and his ex-wife’s marriage took a turn for the worse and described one occasion when she visited the petitioner and his ex-wife yelled at him. The petitioner’s father indicated that the petitioner and his ex-wife were married and that they visited him often at the beginning of their marriage. [REDACTED] stated that his son told him he and his ex-wife were expecting a baby and that in May, 2010, he moved in with them. Mr. [REDACTED] indicated that after he moved in with them, he noticed that the petitioner’s ex-wife was not present as much as she used to be, and would come home late at night, sometimes appearing intoxicated. These affidavits do not describe the affiants’ observations in probative detail or provide any other substantive information regarding the petitioner’s interactions and relationship with his ex-spouse prior to and during their marriage. The director correctly concluded that these affidavits were insufficient to demonstrate that the petitioner married his ex-wife in good faith.

The petitioner also submitted photographs of himself and his ex-wife at their wedding and on two other unspecified occasions. The petitioner submitted 2009 tax returns marked as “married filing separately,” but earning statements listing him as single. He submitted bank statements for an account under his and his ex-wife’s name, but there is insufficient information to indicate that both he and his wife used the account. He submitted an application for life insurance in which the petitioner’s ex-wife is named as the beneficiary, but there is no evidence that the petitioner ever paid for the insurance policy. The petitioner also submitted health insurance and AAA membership cards. However, this evidence, without probative testimony, is insufficient to establish the petitioner’s intentions upon entering into the marriage.

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(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(c)(2)(vii). In this case, however, the testimonial evidence submitted does not demonstrate the petitioner’s entry into his marriage in good faith. In his affidavits, the petitioner briefly describes meeting his wife and their courtship, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. Similarly, the affidavits from his friend and father are general and do not discuss in probative detail their observations of the petitioner’s interactions with or feelings for his ex-wife during their courtship or marriage. When viewed in the aggregate, the relevant evidence submitted below and on appeal does not demonstrate, by a preponderance of the evidence, that the petitioner entered into marriage with his ex-wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Battery or Extreme Cruelty*

We find no error in the director’s determination that the petitioner’s ex-wife did not subject him to battery or extreme cruelty and the petitioner’s evidence on appeal fails to overcome this ground for denial. In his affidavit, the petitioner indicated that his wife called him names, refused to do chores, came and went as she pleased, and punched him in the stomach on one occasion. The petitioner also stated that his ex-wife had an affair which resulted in a pregnancy that she initially led the petitioner to believe was his child. The petitioner’s ex-wife altered a check and deposited it in their joint bank account. The petitioner’s brief statement that his ex-wife punched him lacks substantive, detailed information sufficient to demonstrate that his ex-wife battered him. The other acts the petitioner describes are not comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) as extreme cruelty.

█ M.D. diagnosed the petitioner with depressive disorder and anxiety disorder. His evaluation repeated the petitioner’s claims and added that on one occasion the petitioner’s wife threw things around. In a follow up report, Dr. █ asserted that the petitioner experienced “overwhelming shock, humiliation and shame” when his former wife delivered a baby that wasn’t his. Dr. █’s reports do not offer any probative description of the one claimed incident of battery. Dr. █ also does not indicate that the petitioner’s wife’s non-physical behavior was accompanied by

coercive actions, threats of harm, was part of an overall pattern of violence, or otherwise constituted extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

In her affidavit, [REDACTED] stated that the petitioner told her he and his ex-wife were having problems and that his ex-wife yelled at him, called him names, and told him that the baby she was carrying was not his. Ms. [REDACTED] also indicated that on one occasion she observed the petitioner's ex-wife yell at him when she came home with two other people that looked as though they were intoxicated or under the influence of drugs. In his affidavit, [REDACTED] stated that after he moved in with the petitioner and his ex-wife, she was not present at the house as often, she didn't do chores, and she yelled at the petitioner and called him names. Mr. [REDACTED] also confirmed that the petitioner's ex-wife told the petitioner that he was not the father of the baby she was having. Ms. [REDACTED] and Mr. [REDACTED]'s affidavits lack probative details, and do not describe any behavior that 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).

On appeal, the petitioner does not provide any new evidence that his ex-wife subjected him to battery or extreme cruelty. The relevant evidence submitted below also does not demonstrate that the behavior of the petitioner's ex-wife included battery and extreme cruelty. In his affidavit, the petitioner recounted that his ex-wife called him names, yelled at him, stayed out often, did not help with chores, and tricked him into believing the baby she was having was his. Ms. [REDACTED] and Mr. [REDACTED]'s affidavits are consistent with the petitioner's statements, but they do not discuss any specific incident of battery or extreme cruelty. The petitioner's statements and other relevant evidence are insufficient to demonstrate that his ex-wife subjected him to actual or threatened violence, psychological abuse or other forms of extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his ex-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 overcome the director's determinations that he did not establish the requisite entry into the marriage in good faith, that he resided with his wife, and that he was subjected to battery or extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.