



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: NOV 03 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:

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,

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 his former spouse, a United States citizen.

The director denied the petition for failure to establish that the petitioner’s former spouse subjected him to battery or extreme cruelty during the marriage and that he entered the marriage in good faith. On appeal, the petitioner submits a brief.

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 as an abused spouse 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 is a citizen of Ghana who last entered the United States on January 23, 1995 as a B-2 nonimmigrant visitor. On November [REDACTED], the petitioner married P-J-¹, a U.S. citizen, in Georgia and they divorced on November [REDACTED]. The petitioner filed the instant Form I-360 self-petition on January 11, 2011. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the requisite battery or extreme cruelty and good-faith entry into the marriage. 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 filed a motion to reopen or reconsider. The director approved the motion but determined that the petitioner had failed to overcome the grounds for denial. The director's previous decision was affirmed, 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 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.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner did not establish that he entered the marriage with his former spouse in good faith. The petitioner indicated on the Form I-360 petition that during their marriage he and P-J- resided together from November 1999 to September 2001. He submitted below his marriage certificate, greeting cards from P-J-, and several jointly addressed documents including a lease agreement for a residential lot, a letter from the lessor, an uncertified income tax return and an automobile insurance application. While these documents show that the petitioner was lawfully married to P-J-, resided for a time with her, and that she expressed written affection toward him, without a probative account of the petitioner's relationship with his former wife, they are insufficient to establish that he married her in good faith. 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." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the petitioner did not submit affidavits of others who have attested to his good-faith entry into marriage and the petitioner's own personal statements do not establish his claim because they contain insufficient information regarding his marital intentions.

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).

The record contains thirteen personal statements and/or briefs by the petitioner of various lengths and on various topics, the majority handwritten and undated. The petitioner initially submitted four personal statements with his Form I-360 petition, each addressing different aspects of his claim. In one such statement, the petitioner recalled that in July 1999 a mutual friend gave him P-J-'s telephone number, he called her, and they met for dinner. He stated that on one occasion he introduced P-J- to his roommate and on another occasion she introduced him to her sister and children. The petitioner recalled that they drove together to New Mexico in August 1999 and she helped pay for gasoline and motel bills, she gave him a wristwatch for his birthday that month and he gave her a wristwatch for her birthday in October. The petitioner stated that in October 1999, they decided to purchase a home together but because of P-J-'s poor credit she was not included on the mortgage. He recalled that he and P-J- decided to get married to serve as good examples for her children and they married at a courthouse to save money. The petitioner added that he bought rings for her and she bought one for him. He stated that P-J- did the cooking and laundry and he took care of the lawn and the trash, they often dined at a particular restaurant, sometimes went out to see movies, attended church on Sundays and he met many of P-J-'s family members.

In one undated personal statement, the petitioner wrote that his and P-J-'s intent to establish a life together was declared before they married. In another, he stated that he and P-J- dated for four months before they married and the only evidence of their courtship is a wristwatch she gave him and a photograph of it he submitted for the record. The petitioner reiterated that he bought P-J- a wristwatch, an engagement ring and a wedding band. In a third undated statement, the petitioner wrote that he put a down payment on a car for P-J- as well as making a subsequent payment on her behalf to forestall repossession. He explained in another undated statement that P-J- had poor credit and that is why they could not open a joint bank account. The petitioner did not, in any of his personal statements, describe in detail his first meeting with P-J-, their courtship, engagement, wedding ceremony, joint residence, or any shared experiences apart from the claimed abuse.

On appeal, the petitioner briefly summarizes his good-faith marriage claim, stating that during their four month courtship: (1) he met P-J-'s family; (2) they exchanged birthday gifts; (3) they traveled together to New Mexico; (4) they signed a residential lease and P-J- failed the credit requirements; and (5) they married on November [REDACTED] at the [REDACTED] Courthouse. On appeal, the petitioner has not described in detail his first meeting with P-J-, their courtship, wedding ceremony, joint residence, or any shared experiences apart from the claimed abuse. The petitioner's statements lack the necessary insights into his reasons for marrying and his feelings about his wife. Consequently, he has failed to overcome this ground for denial by the director. The preponderance of the relevant credible evidence does not demonstrate that the petitioner entered the 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

The director also correctly determined that the petitioner failed to establish that his former spouse subjected him to battery or extreme cruelty during the marriage. The petitioner initially submitted two personal statements in which he discussed his abuse claim. In one statement, the petitioner recalled

that in early 2000, he found that his briefcase had been broken into and documents removed including P-J-'s birth certificate, her prior divorce certificate, and the Ghanaian birth certificates of the petitioner's five children. The petitioner stated that he and P-J- argued on the morning of August 2, 2000 and later that day, he drove into the back of another vehicle, asserting that their argument was the proximal cause. He explained that in July 2001, P-J- returned from their joint mailbox without any mail for him, refused to give him his mailbox key and thus, he did not receive an immigration interview notice which years later, resulted in the denial of his employment authorization. The petitioner recalled that in August 2001, P-J- dreamed he was killing her, which he believes is because she kept the interview notice from him. He stated that on unspecified occasions P-J- insulted him and called him names, once struck his back, and she told him people who love her would retaliate if he ever harmed her. The petitioner added that in August 2003, nearly two years after his stated separation, he suddenly fell ill and believes that P-J- poisoned the food she prepared for his birthday the night before.

In another personal statement, also submitted with the Form I-360 petition, the petitioner listed what he believed were links between the claimed abuse and his divorce. However, as the petitioner has not demonstrated that his former wife subjected him to battery or extreme cruelty, he has necessarily failed to establish a connection between his divorce and such battery or extreme cruelty. Similarly, in an undated personal statement submitted below, the petitioner asserted that he would suffer extreme hardship if removed to Ghana. However, demonstrating extreme hardship is no longer required of self-petitioners seeking immigrant classification under section 204(a)(1)(A)(iii) of the Act. None of the petitioner's personal statements below demonstrate that his former spouse battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner additionally submitted medical records related to his August 2, 2000 automobile accident which he attributes proximally to an argument he had earlier that morning with P-J-. The petitioner also submitted the affidavit of a former colleague and letters related to services provided to him while homeless, a condition he also attributes proximally to the claimed abuse. stated that he worked with the petitioner from May 1998 to April 2001, often gave him rides home, and the petitioner later told him he had lost his vehicle because he used his money to repair a car belonging to P-J-. an outreach advocate, wrote that the petitioner had been receiving services since April 2011 and was homeless because his "ex-wife impounded his interview letter in August 2000, so he would be deported." a certified addiction counselor, conveyed that the petitioner stated he was "homeless due to a Domestic Violence situation with his ex-wife" and showed the evaluator a briefcase he claimed his wife destroyed. Neither Ms. nor Ms. indicated that they had any knowledge of the petitioner's relationship with his former spouse or the claimed abuse apart from what he reported to them nearly a decade after he and P-J- separated, and none of the affiants stated that the petitioner's former wife battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as defined in the regulation.

On appeal, the petitioner submits a brief containing a short list of incidents he reasserts demonstrate abuse by his former spouse. The petitioner has not supplemented his brief with additional claims of abuse and submits no new evidence on appeal. The petitioner contends, however, that the director used "the wrong standard of adjudication" and incorrectly applied the clear and convincing

evidence standard instead of the preponderance of the evidence standard. However, this claim conflates the evidentiary standard prescribed by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. The statute mandates that U.S. Citizenship and Immigration Services (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). This provision prescribes an evidentiary standard. *See* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). This evidentiary standard is not equivalent to the petitioner's burden of proof in this case, which, as in all visa petition proceedings, is the preponderance of the evidence. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). When determining whether 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)(1).

In both the RFEs and in both of the director's denial decisions, the director addressed the relevant evidence and explained the insufficiency of that evidence to establish the petitioner's eligibility. We find no error in the director's decisions. The preponderance of the relevant evidence does not demonstrate that the petitioner's 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 based on that relationship pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's grounds for denial. He has failed to demonstrate that he entered into the marriage with his former spouse in good faith and that she subjected him to battery or extreme cruelty 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 four 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.