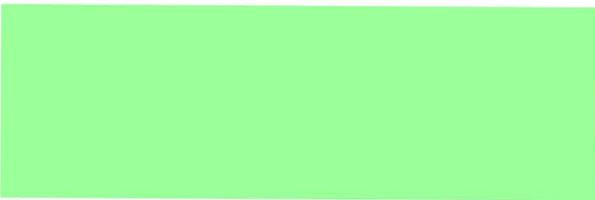


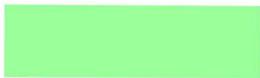
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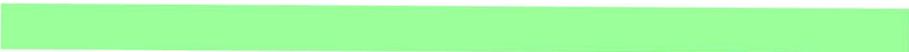
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **NOV 03 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting 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 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 former spouse.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his former wife during their marriage. On appeal, counsel submits additional evidence.

Relevant Law and Regulations

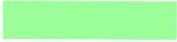
Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, 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 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.



(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The petitioner is a citizen of Ghana who entered the United States on September 15, 2005, as a nonimmigrant visitor. The petitioner married T-P¹, a U.S. citizen, on September [REDACTED] in [REDACTED] Virginia and they were divorced on February [REDACTED] in [REDACTED] Maryland. The petitioner filed the instant Form I-360 self-petition on November 12, 2010. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty. The petitioner, through counsel, responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely 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, the petitioner has not overcome the director's ground for denial and the appeal will be dismissed for the following reasons. Beyond the director's decision, the petitioner has also not established his good moral character.²

Battery or Extreme Cruelty

The director correctly determined that the petitioner's statements and the previously submitted evidence did not show that the petitioner was subjected to battery or extreme cruelty by T-P- during their marriage. In his first affidavit, the petitioner stated that the first two and a half years of their marriage were beautiful but that things started to go badly when their bank account was garnished due to T-P-'s past debts. The petitioner stated T-P- became defensive, angry and verbally abusive because he could not pay off all of her debts. The petitioner briefly recounted one incident where he claimed that T-P- threw keys at his head which left a bruise and that she threw other objects at him when angry. The petitioner stated that T-P- also lied to him about being unable to get pregnant and that he felt stunned when she told him she was expecting. He stated that after U.S. Citizenship and Immigration Services (USCIS) requested that they do a paternity test, T-P- refused to do so and left him in June of 2009. The petitioner described later feeling betrayed when later paternity test results showed that he was not the baby's biological father. The petitioner then stated that shortly thereafter, T-P- called and threatened to kill him so he obtained a temporary protective order against her. The petitioner did not further describe these threats or provide substantive information about any other specific incidents of abuse. The copy of the temporary protective order likewise did not provide any probative details about the claimed abuse. In his second and third affidavits, the petitioner repeated much of his earlier statements but again did not provide probative details regarding specific incidents of battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

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. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

In response to the two RFEs, the petitioner also submitted: affidavits from two friends; visit records and a letter from [REDACTED] medicine prescriptions for hydroxyzine and sertraline; a copy of the [REDACTED] Intake and Evaluation Form dated September 29, 2010; and a psychological evaluation from [REDACTED] Ph.D. In their statements, the petitioner's friends stated that the petitioner confided in them about his former spouse's behavior but they did not describe whether they witnessed specific incidents of abuse or otherwise establish their knowledge of such abuse. The visit records from [REDACTED] demonstrated that the petitioner received counseling from Dr. [REDACTED] and licensed certified social worker [REDACTED]. In the first office visit record dated October 12, 2010, Ms. Eustice diagnosed the petitioner with Severe Major Depression and Recurrent Episode with Psychotic Behavior and noted that the petitioner's stressors at the time included "financial difficulties, an impending divorce, relocation to another apartment, immigration concerns, caring for his daughter, [and] concerns about employment given his emotional state." Ms. [REDACTED] did not explain the basis for her determination or connect the petitioner's depression to any incidents of abuse by T-P-.

The subsequent visit records from Ms. [REDACTED] and Dr. [REDACTED] and medicine prescriptions likewise did not add any substantive information regarding T-P-'s treatment of the petitioner. The letter, dated July 10, 2013, from Ms. [REDACTED] stated that the petitioner sought weekly and monthly counseling sessions from herself and Dr. [REDACTED] since October 7, 2010.³ Ms. [REDACTED] stated that the petitioner sought relief for abuse related symptoms resulting from his relationship with T-P- who was verbally abusive since the beginning of their relationship. She opined that the petitioner was abused in his relationship with T-P- but did not provide substantive information about specific acts of abuse. In her psychological evaluation, dated March 10, 2013, Dr. [REDACTED] stated that she met with the petitioner for one session and concluded that he qualified as a victim of Adult Emotional/Psychological Abuse. While we do not question Dr. [REDACTED] professional expertise, her assessment conveys the petitioner's statements during her interview with him and provides no further, probative information regarding the claimed abuse. The [REDACTED] Intake and Evaluation Form stated only that the petitioner reported that his wife was physically abusive but did not provide any additional information regarding the claimed abuse.

On appeal, counsel asserts that the petitioner, like many victims of domestic abuse, has had a difficult time discussing the trauma he endured. The petitioner submits a fourth personal affidavit and a second letter from his therapist [REDACTED] with attached photographs of his head. In his affidavit, the petitioner briefly lists additional incidents when T-P- called him derogatory names, insulted his culture, and embarrassed him in front of other people. He states that she also demanded sex and insulted him if he could not perform. The petitioner does not describe the sexual assault further or provide substantive information about any other specific incident of abuse. In her letter, Ms. [REDACTED] states that the attached photographs of the scar on the petitioner's head show injuries that were sustained from T-C-'s physical abuse. However, Ms. [REDACTED] letter summarizes what the petitioner relayed to her and does not explain how she came to the conclusion that the scar on the petitioner's head was a result of an altercation with T-P-. Accordingly, the record does not demonstrate that T-P-'s actions constituted

³ As of the date of the letter, the petitioner attended seven counseling sessions from October 7, 2010 to February 13, 2012.

battery or extreme cruelty under the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

Beyond the director's decision, the petitioner has failed to establish that he is a person of good moral character. Primary evidence of a self-petitioner's good moral character is his or her affidavit. 8 C.F.R. § 204.2(c)(2)(v). The affidavit should be accompanied by a police clearance from each place the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition. *Id.* The petitioner attested to his good moral character in his affidavit submitted below but did not submit a local police clearance or state issued criminal background check from Maryland where the petitioner has claimed to reside since September of 2005. Accordingly, the petitioner has failed to demonstrate that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The petitioner has not established that his former wife subjected him to battery or extreme cruelty during their marriage. Beyond the director's decision, he has also not established his good moral character. Accordingly, the petitioner is 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. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also 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.