

(b)(6)



U.S. Citizenship  
and Immigration  
Services

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:

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 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 on the basis of her determination that the petitioner did not marry his wife in good faith and that she did not subject him to battery or extreme cruelty during their marriage.

On appeal, counsel 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).

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 an abused spouse's self-petition for immigrant classification 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 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.

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(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.

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(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 Ivory Coast who claims to have last entered the United States on April 1, 2001, with a fraudulent passport as nonimmigrant visitor. The petitioner married a U.S. citizen on January [REDACTED] in New Jersey. On February 6, 2008, the petitioner was issued a Notice to Appear in removal proceedings for procuring his admission into the United States by fraud or willfully misrepresenting a material fact.<sup>1</sup> The petitioner filed the instant Form I-360 self-petition on January 20, 2012. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and that his wife subjected him to battery or extreme cruelty. The petitioner, through counsel, responded to the RFEs with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

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, including the brief submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

*Entry into the Marriage in Good Faith*

The relevant evidence submitted fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit dated June 27, 2013, the petitioner indicated that he married his wife on January 20, 2006, and that he lived with her until October, 2011. He also stated generally that he stayed with his wife because he loved her. The remainder of his affidavit focuses on the alleged abuse in the marriage. The petitioner also did not provide any additional information regarding his intentions in entering into the marriage in his affidavit dated March 2, 2012. The petitioner did not probatively describe how he met his wife, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the claimed abuse.

The petitioner submitted a [REDACTED] bill addressed to his wife, and a [REDACTED] bill addressed to him. The bills were not addressed to the petitioner and his wife jointly, and do not show that they intended to mingle their finances or their intent when entering into the marriage. The petitioner submitted a detail report for a domestic dispute and traffic tickets that reflect the petitioner and his wife's shared address, but do not provide any information about whether the petitioner married his wife in good faith.

On appeal, counsel claims that the petitioner's five-year residence with his wife combined with his valid marriage certificate demonstrate that he entered into his marriage in good faith. Although the petitioner's marriage certificate shows that he was legally married to his wife, it does not reflect his intentions in entering into the marriage. Similarly, the number of years that the petitioner lived with his wife is not probative of his intentions when entering in his marriage. On appeal, the petitioner did not submit any other relevant evidence to show that he entered his marriage in good faith. The petitioner's

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<sup>1</sup> The petitioner remains in proceedings before the Philadelphia Immigration Court and his next hearing date is [REDACTED]

affidavits and the other relevant evidence submitted below failed to provide any probative details of the petitioner's marital intentions. The director correctly determined that the preponderance of the evidence did not establish the petitioner's good-faith entry into the marriage. A full review of the relevant evidence fails to establish the petitioner's good-faith entry into the marriage, 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 wife did not subject him to battery or extreme cruelty and the applicant did not submit any new evidence on appeal to overcome this ground for denial. In his initial affidavit, dated March 2, 2012, the petitioner indicated that his wife aborted their child and withdrew her sponsorship of his immigrant petition. The petitioner did not provide any further testimonial or documentary evidence regarding the abortion, or demonstrate that his wife had an abortion as a means to psychologically or emotionally harm, or exert control over him. The petitioner also stated that his wife verbally abused him, but did not explain or describe the claimed abuse with any further details. In his affidavit dated June 27, 2013, the petitioner added generally that his wife used money intended for bills for other purposes, called him names, cursed at him, and threw things at him. He also indicated that his wife embarrassed him in front of family members and threatened to send him back to Africa. The petitioner stated that his wife had health problems and used drugs. The petitioner did not probatively describe any specific incidents of battery or psychological abuse or otherwise establish that his wife's actions constituted extreme cruelty under 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted an affidavit from [REDACTED] in which he stated that the petitioner resided with him from March 6, 2008 to April 15, 2008 after the petitioner and his wife had a domestic dispute. Mr. [REDACTED] does not describe the domestic dispute, nor does he describe any acts perpetrated by the petitioner's wife that would constitute battery or extreme cruelty under 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also submitted a detail report of a domestic complaint that indicated that the petitioner's wife was arguing with him and refused to give him his car keys, and then left with the petitioner's vehicle. This report does not contain any information to demonstrate that the petitioner's wife committed any acts of battery or extreme cruelty during this incident or at any other time.

On appeal, counsel contends that the petitioner submitted sufficient evidence to show that he was subject to battery or extreme cruelty, and that the abuse need not be physical. Counsel correctly asserts that the abuse need not be physical, but as explained above, the relevant evidence in this case does not establish that the petitioner's wife battered him or subjected him to threats of violence, psychological or sexual abuse, or other actions constituting 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 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 not demonstrated that he entered into marriage with his wife in good faith or that she subjected him 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.