

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: Office: VERMONT SERVICE CENTER File:

NOV 07 2014

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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (“acting director”), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director’s decision will be withdrawn and the matter remanded for entry of a new decision.

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 acting director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage. On appeal, counsel contends the acting director made mistakes regarding the affidavits in the record and re-submits the affidavits that had been submitted below.

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 self-petition are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (i) (A) Is the spouse of a citizen or lawful permanent resident of the United States [and]
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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 explained 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner. . . .

* * *

(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 Ghana who entered the United States on January 20, 2004, as a nonimmigrant visitor and claims to have been customarily divorced from his first wife in March 2003 according to the laws of Ghana. On July [REDACTED] the petitioner married M-M-¹, a United States citizen, in [REDACTED], Massachusetts. The petitioner filed the instant Form I-360 self-petition on March 16, 2012. The acting director subsequently issued two Requests for Evidence (RFE's) because the petitioner failed to establish, among other things, M-M-'s battery or extreme cruelty. The petitioner, through counsel, responded with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has overcome the acting director's ground for denial. Nonetheless, the Form I-360 petition may not be approved because the petitioner has not established he has a qualifying relationship with M-M- and that he married in her good faith.

Battery or Extreme Cruelty

The petitioner's initial statement, dated January 23, 2012, and his subsequent statement submitted in response to an RFE contained credible and detailed statements describing numerous, specific incidents of battery or extreme cruelty by M-M-. For instance, he recounted an incident when his friend, [REDACTED] visited the couple in July 2009 and M-M- told Mr. [REDACTED] to shut up, screamed at the petitioner, then poured a bottle of oil on the petitioner's head. In addition, the petitioner described that in December 2009, while at a church gathering, M-M- punched him in the ribs and pulled him by the arm to the car, injuring his arm, because he was talking with other women. He also recounted the specific details of a conversation he was having with others at a cookout in April 2010, when M-M- punched him in the mouth. He described another incident in July 2010 when M-M- slapped him at a restaurant during her birthday celebration in front of his friend, [REDACTED]. In addition, the petitioner provided probative details of an incident at a museum in Boston with his friend, [REDACTED], and others in August 2010 when M-M- spit on him, held him by the chest, and shook him. Moreover, in September 2010, he described being at a church retreat in [REDACTED] when M-M- pushed him out of a chair and kicked him while he was down, and how humiliating it was to get picked up off the ground by a security guard. He contended that in December 2010, M-M- hit him in the face when she thought he made a "dumb" suggestion while planning a New Year's party for the Ghana Association in [REDACTED].

Affidavits from [REDACTED] all attested to personally observing M-M-'s physical assaults on the petitioner. For instance, [REDACTED]

¹ Name withheld to protect the individual's identity.

described how she saw M-M- punch the petitioner in the mouth at a cookout in April 2010. She also witnessed M-M- spit on the petitioner's face, hold his shirt, and shake him in August 2010 at the [REDACTED] in Boston. She also described seeing M-M- push the petitioner out of his chair and kick him while he was on the floor during a church retreat in September 2010. She recounted security guards rushing to lift the petitioner off the ground and asked him if he wanted them to call the police. Ms. [REDACTED] provided significant details regarding the specific conversations that preceded each assault. Similarly, Mr. [REDACTED] recounted watching M-M- pour oil on the petitioner in July 2009, witnessed her punch the petitioner in the ribs and pull his arm, injuring him, during the church's visitor's day, and saw her hit him in the face when she became agitated about the petitioner's suggestions for a New Year's party in December 2010. Mr. [REDACTED] explained in detail how M-M- would hit and punch the petitioner frequently, even in public, and how he tried to encourage the petitioner to call the police. All four affiants attested to the fact that M-M- habitually assaulted the petitioner in public and in front of his friends, yelling and screaming at him as if he were a child.

To the extent the acting director found that the record includes inconsistent statements from the petitioner and [REDACTED] who had described a peaceful and wonderful marriage between the petitioner and M-M-, these statements were not submitted for the instant Form I-360 self-petition, but rather, for the Form I-130 Petition for Alien Relative filed by M-M-. As the petitioner reasonably explained in response to the RFE, he was embarrassed about being abused by M-M- and had not yet discussed the abuse with Mr. [REDACTED]. Mr. [REDACTED] affidavit, dated December 13, 2013, submitted for the Form I-360 self-petition confirmed that it was not until April 2011 that the petitioner confided in him that M-M- had been abusing him. Therefore, the record is not inconsistent with respect to M-M-'s mistreatment of the petitioner and any inconsistency has been reasonably explained by the petitioner. Upon a full review of all the relevant and credible evidence, the petitioner has demonstrated by a preponderance of the evidence that M-M- subjected him to battery and extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship

The appeal cannot be sustained, however, because beyond the decision of the acting director, the petitioner has not established that he has a qualifying relationship with M-M-.² The validity of a marriage for immigration purposes is determined by the law of the place in which the marriage was celebrated. *Matter of Hosseinian*, 19 I&N Dec. 453, 455 (BIA 1987). Under the principle of comity, a foreign divorce will generally be recognized in the United States for immigration purposes if it was valid under the laws of the jurisdiction granting the divorce. *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983). When the petitioner relies on foreign law to establish eligibility, the application of the foreign law is a question of fact, which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008).

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 this case, the petitioner was previously married in Ghana and claims he was divorced in 2003. As evidence of the termination of this marriage, he submitted a “statutory declaration confirming dissolution of customary marriage” by the Superior Court of Judicature, The High Court of Justice, in Accra, Ghana. The declaration states, in pertinent part:

2. That we [redacted] are the father and mother respectively of [the petitioner and his first wife] who were born on the [redacted] to their mothers [redacted] respectively.
3. That we have the authority to represent them as such we were present to celebrate their marriage ceremony which took place under the Customary Laws of Ghana on the [redacted] day of [redacted] at Accra.
4. That to the best of our knowledge their marriage has ceased to exist due to misunderstanding which they faced during the existence of their marriage.
5. That their marriage was consequently dissolved on the [redacted] day of [redacted] at Accra whereby all the needed rites were performed and after the principal members have approved of their divorce, they were declared a separated couple forever.

This declaration is insufficient to establish that the petitioner obtained a valid divorce from his first wife. The Board of Immigration Appeals (BIA) has held that an affidavit may be sufficient under Ghanaian law to establish the dissolution of a customary tribal marriage if the evidence establishes “(1) the tribe to which [the petitioner] belongs, (2) the current customary divorce law of that tribe, and (3) the fact that the pertinent ceremonial procedures were followed.” *Matter of Kodwo*, 24 I&N Dec. at 482 (quoting *Matter of DaBasse*, 16 I&N Dec. 39 (BIA 1976)). In addition, the BIA stated that “[a]ffidavits should be specific and include the full names and birth dates of the parties; the date of the customary marriage; the date of, and grounds for, the dissolution of the marriage; the names, birth dates of, and customary agreement for any children born of the marriage; and a description of the tribal formalities that were observed, including the names of the tribal leaders, the name of the tribe, the place, the type of divorce, and any other relevant information.” *Id.* at 483; see also *Matter of Kumah*, 19 I&N Dec. 290 (BIA 1985).

In this case, the affidavit of customary divorce does not describe the petitioner’s tribe, the customary divorce law of that tribe, a description of the ceremonial procedures performed for the divorce, or any other specific information regarding the petitioner’s claimed divorce. The petitioner himself does not address his divorce from his first wife and there is no other relevant evidence in the record. Furthermore, there is no evidence that Massachusetts, where the petitioner and M-M- were married, would consider the petitioner’s second marriage to be valid despite the absence of a valid divorce decree from his first wife. See *Matter of Hosseinian*, 19 I&N Dec. 453, 455 (BIA 1987) (“here one of the parties to a marriage has a prior divorce, we look to the law of the state where the subsequent

marriage was celebrated to determine whether or not that state would recognize the validity of the divorce”).³

More importantly, the customary divorce affidavit contains unexplained internal inconsistencies. First, one of the informants, [REDACTED] claims to be the mother of the petitioner’s first wife. However at line #1 of the affidavit the identity of the petitioner’s first wife’s mother is given as [REDACTED]. Neither the petitioner nor the affidavit itself explains this inconsistency. Second, the informants state that they are the respective father and mother of the petitioner and his first wife; however, they list the same residential address as “House No. [REDACTED] [REDACTED]”. Third and finally, this affidavit was executed in April 2008, more than five years after the petitioner’s marriage had allegedly been dissolved, and he fails to explain the delay in obtaining evidence of his alleged customary divorce. Accordingly, the petitioner has not established that his divorce from his first wife and his subsequent marriage to M-M- were valid. Consequently, the petitioner has failed to demonstrate that he has a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification based on such a relationship pursuant to section 204(a)(1)(A)(iii)(II)(aa), (II)(cc) of the Act.

Good-Faith Entry into the Marriage

Also beyond the acting director’s decision, the record fails to demonstrate the petitioner’s good faith entry into his marriage.

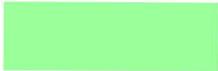
The petitioner stated generally that he met his wife at a Walmart in January 2007, that they started dating, and that “it came to my mind that I have to ask her hand in marriage.” The petitioner did not describe his courtship of M-M-, their wedding ceremony, or any of their shared experiences leading up to his decision to enter into marriage with M-M-.

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). Neither the petitioner’s statements nor the statements from his friends provide the necessary detail to demonstrate the petitioner’s good faith entry into his marriage. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with M-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

While he demonstrated that M-M- subjected him to battery or extreme cruelty during their relationship, he has not shown that she was his spouse at the time. Thus, the petitioner has not established a qualifying relationship with a U.S. citizen and his corresponding eligibility for

³ Massachusetts does not recognize bigamy or polygamy. See MASS. GEN. LAWS ANN. 207 § 4 (West 2014).



immigrant classification based upon such a relationship. The petitioner has also failed to show that he entered into marriage with his spouse in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Accordingly, we remand the matter to the director for entry of a new decision into the record.

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).

ORDER: The acting director's decision, dated September 10, 2013, is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner shall be certified to the AAO for review.