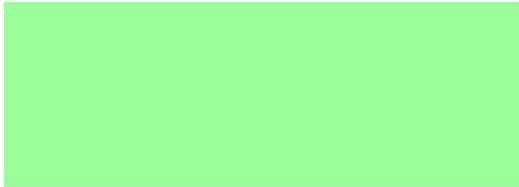


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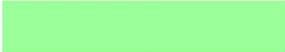
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

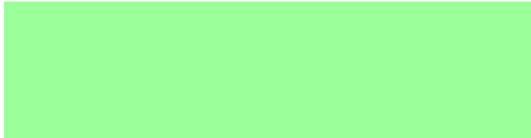


Date: **NOV 14 2014** Office: VERMONT SERVICE CENTER File: 

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:

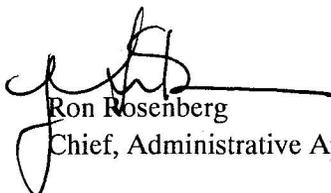


INSTRUCTIONS:

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,

  
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 because the petitioner failed to establish his entry into the marriage in good faith, that his wife subjected him to battery or extreme cruelty, that he had a qualifying relationship with his spouse and that he was eligible for immigrant classification, and because the petitioner did not comply with the provisions of section 204(g) of the Act.

On appeal, counsel submits a brief and additional evidence.

*Applicable Law*

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 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 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.

\* \* \*

(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.

In addition, the regulations require that to remain eligible for immigration classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exception to section 204(g) of the Act as follows:

*Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –*

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

*Evidence to establish eligibility for the bona fide marriage exemption.* Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

*Facts and Procedural History*

The petitioner is a citizen of Nigeria who entered the United States on November 29, 1997, as a nonimmigrant visitor. The petitioner married his first U.S. citizen spouse in [REDACTED] and they were divorced in January [REDACTED]. On September 22, 2008, the petitioner was issued a Notice to Appear in removal proceedings for remaining in the United States beyond his period of authorized stay.<sup>1</sup> The petitioner married his second U.S. citizen spouse on November [REDACTED] in New York. The petitioner and his wife were divorced on January [REDACTED]. The petitioner filed the instant Form I-360 self-petition on August 5, 2013. The director subsequently issued a Request 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 RFE 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 first affidavit dated May 28, 2013, the petitioner indicated that he met his wife in 2007 when he drove her in his cab; she then began to request him every time she needed a cab. They became friends and exchanged telephone numbers, so she started calling him directly. The petitioner stated that he began spending the night at her place, and by the summer of 2008, he was living in her apartment and they talked about having babies and getting married. He recalled that after a date at [REDACTED] he proposed. The petitioner indicated that they were married at [REDACTED] on November [REDACTED] and the alleged abuse began soon thereafter. The petitioner also submitted a brief statement in which he stated generally that he entered into marriage with his wife in good faith and that he did not enter into the marriage with the intent to evade or circumvent immigration laws. In his response to the RFE, the petitioner submitted another affidavit in which he added that after he and his wife met, they grew fond of each other and she became a non-paying customer. He also indicated that they met at [REDACTED] to hang out on weekends, and that they used to go to [REDACTED]. The petitioner stated that he dated his wife for a year before they were married, and that he made clear to her that he was not interested in her for immigration "papers" and that he was in removal proceedings. 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 also submitted a letter from [REDACTED] who indicated that the petitioner and his wife were married in [REDACTED] and that they were living together in [REDACTED] and then divorced in early [REDACTED].

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<sup>1</sup> The petitioner remains in removal proceedings before the New York Immigration Court and his next hearing is on January 8, 2015.

The petitioner submitted a letter from his wife that appears to have been written for the Form I-130 petition she filed on his behalf, in which she stated generally that they were married and that they intended to have kids, and that they did not enter into the marriage for the purpose of evading immigration laws. Neither of the affiants probatively described the petitioner's intentions in entering the marriage or provided any substantive information regarding their observations of the petitioner's interactions and relationship with his wife prior to and during their marriage. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married his wife in good faith.

The petitioner submitted a [REDACTED] bill addressed only to him, not to the petitioner and his wife jointly. The petitioner submitted a New York registration document, a copy of his driver's license, and a lease letter that indicated the petitioner had not been put on the lease because the rental company was conducting a background check. While these documents 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. 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. The petitioner submitted photographs of himself and his wife on a few unspecified occasions. He submitted two joint [REDACTED] bills and evidence that the petitioner and his wife opened a joint checking account on December 15, 2008; however, the bank statements and letter show low balances and little activity, and do not show that both the petitioner and his wife used the account. The petitioner also submitted a copy of his 2008 income tax transcript showing that the petitioner and his wife filed jointly, and evidence of an insurance policy that does not indicate the policyholder's beneficiary. This evidence, without probative testimony, is insufficient to establish the petitioner's intentions upon entering into the marriage. In his affidavits, the petitioner briefly describes meeting and dating his wife and states that they were married, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. When viewed in the aggregate, the relevant evidence does not demonstrate, by a preponderance of the evidence, that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Section 204(g) of the Act further Bars Approval*

The director also correctly determined that section 204(g) of the Act bars approval of the petition. Because the petitioner married his wife while he was in removal proceedings and did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5<sup>th</sup> Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard.") To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section

245(e)(3) of the Act, the petitioner must establish his good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner failed to establish his good-faith entry into his marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.<sup>2</sup>

#### *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. In his initial affidavit, the petitioner indicated that after he was unable to father children, his wife questioned his manhood and called him names. The petitioner also stated that his wife grabbed his clothes, spit at him, and smelled him all over to assure he wasn’t having an affair. He also recalled that his wife did not pay the bills with the money he gave her, bumped into him, and pushed him out of the way. In his affidavit in response to the RFE, the petitioner added that his wife monitored when he got home. The petitioner did not probatively describe any specific incidents of battery or extreme cruelty or otherwise establish that his wife’s actions constituted extreme cruelty under 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted a psychological evaluation prepared by [REDACTED] a psychiatrist. Mr. [REDACTED] indicated that the petitioner’s wife lied to the petitioner, disrespected him, and was controlling and demeaning. He also reported that the petitioner’s wife misused the money he gave her for bills, invited people into their home, and humiliated him by smelling him when he arrived home to confirm he was not having an affair, but made no mention of any incidents of battery. Mr. [REDACTED] also stated that the petitioner’s wife called him names and refused to help him with his immigration situation. Mr. [REDACTED] diagnosed the petitioner with depression and anxiety. Mr. [REDACTED] report does not offer any probative descriptions of any particular incidents or acts comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). There is no indication that the petitioner’s wife’s non-physical behavior was accompanied by coercive actions, threats of harm, or was otherwise part of an overall pattern of violence.

The petitioner’s statements and the other relevant evidence do not indicate that his wife’s behavior involved psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). When considered in the aggregate, the relevant evidence also fails to establish that the petitioner’s wife subjected him to battery during their marriage. The petitioner stated generally that his wife bumped into him and pushed him out of the way, but he failed to provide a probative description of these events or show that any incident resulted or threatened to result in physical or mental injury. *See* 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also did not establish that any other acts were part of an overall pattern of violence. *Id.*

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<sup>2</sup> Counsel’s appellate brief only discusses the petitioner’s good faith entry into his marriage and does not contain any discussion of section 204(g) of the Act.

On appeal, counsel submits a brief and articles on how infertility is viewed in Nigeria. The articles do not provide any information regarding the petitioner's wife's actions towards him. On appeal, counsel contends that the petitioner submitted sufficient evidence to show that the petitioner was subjected to abuse, and that the abuse need not be physical. Counsel is correct 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.

#### *Qualifying Relationship and Immediate Relative Classification*

The petitioner has also failed to demonstrate that he had a qualifying relationship with a U.S. citizen and that he is eligible for immediate relative classification based on such a qualifying relationship. The petitioner and his wife were divorced prior to the filing of the Form I-360, and as the petitioner 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. See section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Furthermore, because the petitioner is not exempt from and has not complied with section 204(g) of the Act, he is also ineligible for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

#### *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 also has not demonstrated his eligibility for the exemption at section 245(e)(3) of the Act and complied with section 204(g) of the Act. Furthermore, the petitioner has not established his qualifying relationship or eligibility for immediate relative classification. 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.