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U.S. Citizenship
and Immigration
Services

Date: NOV 19 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)

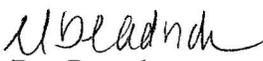
ON BEHALF OF PETITIONER:

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 for failure to establish that the petitioner entered the marriage in good faith. 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 self-petition are further explained in 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, that a spouse may self-petition under these provisions if she establishes:

(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 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.

* * *

(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 the Philippines who entered the United States on October 30, 2002, as a nonimmigrant exchange visitor. He married D-D-¹, a U.S. citizen, on January [REDACTED] in Reno, Nevada. The petitioner filed the instant Form I-360 self-petition on August 13, 2013. The director subsequently issued a Request for Evidence (RFE) of the petitioner's entry into the marriage in good faith. The petitioner, through counsel, timely responded 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 conducts appellate review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed.

Entry into the Marriage in Good Faith

In the petitioner's initial declaration, he stated that he met D-D- in November 2011 when his cousin, [REDACTED] set them up on a blind date. He briefly recounted that after they met, they talked on the telephone, went out to eat, and watched television at home. He described D-D- as being kind, caring, and gentle. He recounted that they had a small wedding ceremony in January [REDACTED] and that while they were looking for their own apartment, they lived with his cousin and D-D-'s sister. The rest of his declaration described how D-D- mistreated him. In response to the RFE, the petitioner submitted a supplemental declaration explaining that because he had overstayed his visa by almost a decade, he had kept to himself, but that he trusted his cousin when she set him up on a date with D-D-. The petitioner claimed he became smitten with D-D- because she was very talkative, humorous, and confident. He recounted how much she loved her one-year old son and that they spent many hours together at her apartment caring for him. The petitioner reiterated that they stayed home and watched DVD's most of the time, and occasionally went out to eat.

¹ Name withheld to protect the individual's identity.

The petitioner's declarations lacked probative details of the couple's courtship, wedding ceremony, shared residence, and experiences apart from the abuse. To the extent the petitioner explained that he did not have any documentation or other physical evidence of his good faith intent to marry D-D-, 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). 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, declarations from his cousin and her husband also did not provide relevant, substantive information regarding the petitioner's good-faith intentions. For example, the petitioner's cousin, Ms. [REDACTED], briefly recounted that she introduced the petitioner to D-D-, attended their wedding, and that the couple lived in a bedroom in her house. However, Ms. [REDACTED] did not describe, for example, any specific contact with the petitioner and D-D-, any particular occasion she spent with the couple, or any interactions with them that would establish her personal knowledge of the petitioner's marital intentions. Although Ms. [REDACTED]'s husband briefly recounted that the petitioner once told him he was in love with and trusted D-D-, his declaration also did not provide any additional probative information regarding the couple's courtship, wedding ceremony, shared residence, and experiences. Even considering the photographs of the couple's wedding ceremony, without a more detailed and probative statement from the petitioner regarding his marital intentions and probative details from the petitioner's cousin and her husband in support of the petitioner's claims, the preponderance of the evidence does not show the petitioner entered the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that he entered into his marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.