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U.S. Citizenship  
and Immigration  
Services

Date: **NOV 21 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:  
[REDACTED]

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 was the subject of battery or extreme cruelty by his former wife, and that he married her in good faith. On appeal, counsel submits a brief and 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). An alien who has divorced an abusive U.S. 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 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.

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(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 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.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Ghana, entered the United States on September 29, 2006 as a B-2 nonimmigrant visitor. He married I-P-<sup>1</sup>, a U.S. citizen, on August [REDACTED] New Hampshire. I-P- filed an immigrant visa petition on behalf of the petitioner, which was subsequently

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<sup>1</sup> Name withheld to protect the individual's identity.

denied as abandoned. The petitioner divorced I-P- on May 14, 2010 and filed the instant Form I-360 self-petition on December 16, 2010. The director subsequently issued a request for additional evidence (RFE) of battery and/or extreme cruelty, and the petitioner's good-faith entry into the marriage, among other issues. The petitioner responded with further evidence, which the director found insufficient to establish his eligibility. The director denied the petition and counsel timely appealed.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

The preponderance of the relevant evidence does not establish that I-P- battered the petitioner or subjected him to extreme cruelty. In his personal affidavit, dated July 18, 2010, the petitioner recounted that in early December 2008, I-P- engaged in an extramarital relationship, and threatened to have the petitioner deported when he confronted her about it. The petitioner described another argument in December 2008 when I-P- threw his television set on the floor and became physically aggressive. The petitioner also discussed additional incidents when I-P- threw beer on the petitioner and displayed affection with her paramour in front of the petitioner, and locked the petitioner out of his bedroom. The petitioner stated that the couple mutually agreed to separate in June 2009.

The petitioner submitted a psychological evaluation prepared by licensed psychologist [REDACTED] dated September 18, 2010. The evaluation, which appears to be based on a single meeting with the petitioner in September 2010, recounts I-P-'s behaviors, as described by the petitioner, including lack of respect for the petitioner, marital infidelity, threats of deportation, and throwing beer at the petitioner. Dr. [REDACTED] concluded that the petitioner was experiencing stress and anxiety initiated by the petitioner's marital discord with his former spouse, and maintained by issues including financial hardship and the petitioner's immigration status, among others. The evaluation does not indicate that I-P- battered the petitioner or subjected him to extreme cruelty. The petitioner also submitted an affidavit from his friend, [REDACTED] dated July 26, 2010, attesting to some of I-P-'s problematic behaviors including "drinking, smoking, partying with other men and skipping church." Mr. [REDACTED] stated that he noticed tension and disagreements between the petitioner and I-P-, but did not describe specific incidents of abuse.

In response to the RFE, the petitioner provided an additional personal affidavit dated December 31, 2013. In the affidavit, the petitioner briefly stated that I-P- was controlling and humiliated him in public, and attacked him physically in the presence of others, but did not provide a probative account of specific incidents of battery or extreme cruelty. Also in response to the RFE, the petitioner submitted an affidavit from his friend [REDACTED] dated January 14, 2014. In her affidavit, Ms. [REDACTED] recounted that she witnessed some of the petitioner's disputes with I-P-, and that I-P- used profanity and became physically aggressive on one occasion. However, she did not provide probative information regarding the specific incidents that she purportedly witnessed. The petitioner also provided an affidavit from his friend, [REDACTED] dated January 14, 2014, in which Mr. [REDACTED] stated that the petitioner told him that I-P- had slapped him on one occasion. Mr. [REDACTED] asserted that incidents of

physical abuse occurred during the petitioner's marriage but did not attest to witnessing such incidents, or provide any probative information regarding the claimed abuse.

In her decision, the director correctly determined that the relevant evidence submitted below did not establish that I-P- battered the petitioner or subjected him to extreme cruelty. On appeal, the petitioner submits a second psychological evaluation prepared by Dr. [REDACTED] based on a single follow-up assessment on March 31, 2014. The evaluation states that the petitioner no longer has contact with I-P-, but reports flashbacks from the claimed abuse. Dr. [REDACTED] concludes that the petitioner has major depressive disorder as a result of ongoing stressors. Dr. [REDACTED] describes the source of the petitioner's stress as immigration issues, financial constraints, unstable employment, and limited support and resources. Dr. [REDACTED] does not indicate that the petitioner's depression is a result of abuse inflicted on him by I-P-, nor does she describe any incidents of battery or extreme cruelty.

On appeal, counsel asserts that the petitioner suffered emotional and psychological abuse constituting extreme cruelty. Counsel contends that the petitioner was humiliated and dishonored by his wife's behavior, the effects of which were magnified by his position as a respected member of his church. However, I-P-'s behavior, as described in the relevant evidence submitted below and on appeal, does not reflect a pattern of violent behavior consistent with the definition of extreme cruelty at the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner must demonstrate that his former spouse battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The preponderance of the relevant evidence, reviewed above, does not so demonstrate. The petitioner indicated that he had arguments with his wife, that she was unfaithful, and that on one occasion she locked him out of his bedroom. Neither the petitioner, nor the third-party affiants, substantively described any incidents of battery or behavior constituting extreme cruelty. The preponderance of the relevant evidence does not establish that the petitioner's former spouse subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Entry into the Marriage in Good Faith*

The director did not err in finding that the petitioner failed to establish that he married his former spouse in good faith. In his initial Form I-360 submission, the petitioner provided a personal affidavit dated September 22, 2010, in which he stated that he was blown away by I-P-'s love and commitment when he met her, but did not provide further information regarding the relationship. The petitioner submitted another personal affidavit dated July 18, 2010, in which briefly described meeting I-P- after a church function. The petitioner indicated that he and I-P- had their first date in mid-November 2006, became engaged in April 2007, and married in August [REDACTED]. The petitioner mentioned that the couple attended church together, and engaged in some activities, but did not substantively describe their courtship, or shared experiences beyond the claimed abuse. Despite the petitioner's emphasis throughout his affidavits on his heavy involvement with his church in Worcester, Massachusetts church, the record reflects that the couple married in [REDACTED] New Hampshire. The petitioner did not provide probative testimony regarding his wedding ceremony. The petitioner submitted an affidavit from his friend [REDACTED], who attested to witnessing the marriage ceremony, but did not describe the event. He provided unlabeled photographs of what appear to be his civil wedding ceremony, and photographs of him and I-P- on one other occasion. The petitioner also submitted four greeting cards from his family in

Ghana; however, the preprinted messages in the cards are not evidence of the petitioner's intent in marriage. In addition, the petitioner provided a lease in his and I-P-'s names, commencing January 1, 2008, for a residence on [REDACTED] in Worcester. The lease was not signed by I-P- and commenced prior to the time the petitioner stated that he began to reside with I-P- in August [REDACTED]. The petitioner also submitted one joint checking account statement in his and I-P-'s names for February 2009, one telephone bill dated December 22, 2008, and an internet bill dated February 22, 2009. The petitioner also provided a letter purportedly from I-P-'s health insurance provider, dated February 12, 2009.

In the RFE, the director reviewed the deficiencies of the relevant documents, and requested that the petitioner provide additional to establish that he married I-P- in good faith. In response to the RFE, the petitioner submitted an additional affidavit dated December 31, 2013 in which he addressed some of the discrepancies as noted by the director, but did not provide additional information regarding his courtship, wedding ceremony, and shared experiences with I-P-. The petitioner also submitted an affidavit from his friend [REDACTED]. In the affidavit, Ms. [REDACTED] discussed her friendship with I-P-, but did not provide probative information regarding the petitioner's relationship with I-P- beyond the details of the claimed abuse. Ms. [REDACTED] summarily stated that the petitioner's marriage to I-P- was based on love and not immigration papers, but she did not explain the basis for her opinion. The petitioner also submitted an affidavit from his friend [REDACTED] dated January 14, 2014. In the affidavit, Mr. [REDACTED] indicated that he went on double dates with the petitioner and I-P- several times before and after their marriage, but did not describe any of these occasions. He also briefly stated that he visited the petitioner and I-P- at their home, where they prepared African food together. This short description of one shared experience between I-P- and the petitioner is not sufficient to establish the petitioner's intent in marriage.

In her decision finding that the petitioner failed to establish that he married I-P- in good faith, the director noted the lack of evidence demonstrating commingling of resources and shared financial responsibilities. Under section 204(a)(1)(A)(iii) of the Act, 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). However, a self-petitioner must nonetheless satisfy his burden of proof. In lieu of traditional documentation, 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." 8 C.F.R. § 204.2(c)(2)(vii). Here, neither the petitioner's affidavits, nor those of his friends, provide sufficient probative testimony regarding his courtship, wedding ceremony, shared residence and experiences beyond the claimed abuse to establish that the petitioner married I-P- in good faith. The unlabeled photographs and the preprinted greeting cards from the petitioner's family do not provide insight into the petitioner's intent in marriage. Further, the bills, health insurance letter, and checking account statement for just one month of the petitioner's relationship, in the absence of probative testimony regarding the petitioner's relationship with I-P-, do not demonstrate that the petitioner married I-P- in good faith. Moreover, the documents contain irregularities, including misspelled words, mismatched dates, fonts, and spacing, that severely diminish their credibility. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with I-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

As the petitioner has failed to establish the requisite battery or extreme cruelty, he also has not demonstrated any connection between his divorce and such battery or extreme cruelty. Consequently, beyond the director's decision, the petitioner has not established that he had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(CC)(ccc) of the Act.<sup>2</sup>

*Conclusion*

On appeal, the petitioner has failed to establish his former wife's battery or extreme cruelty, his good-faith entry into the marriage, a qualifying relationship with his former wife, and his corresponding eligibility for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> An application or petition that fails to comply with the 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).