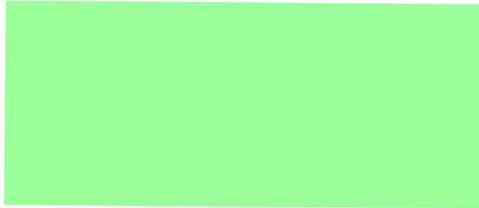




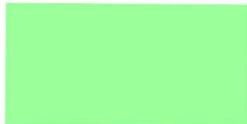
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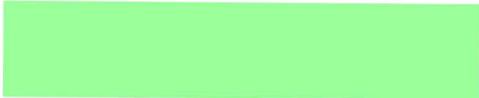
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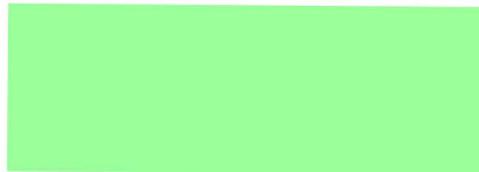
Office: VERMONT SERVICE CENTER

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 Acting Director for the 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 under 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 a United States citizen.

The director denied the petition after determining that the petitioner did not establish that he complied with the provisions of section 204(g) of the Act. Consequently, he also determined that the petitioner had not demonstrated the existence of a qualifying spousal relationship with a citizen of the United States and his corresponding eligibility for immediate relative classification on the basis of such a relationship. The director also found that the petitioner did not establish that his wife subjected him to battery or extreme cruelty during the marriage, and that he entered the marriage in good faith.

On appeal, the petitioner submits a brief and additional documentation.

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).

Section 204(a)(1)(J) of the Act 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 record in this case indicates that the petitioner was in removal proceedings at the time of his marriage. In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes, in pertinent part:

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 . . . by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien's right to

remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after his marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (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.

(Emphasis added)

The eligibility requirements for this classification are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(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].

* * *

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.”

* * *

(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 . . . 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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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 ... 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 was born in Bangladesh on February 2, 1956, and entered the United States without inspection on April 24, 1992. On that same day the agency served the petitioner with an Order to Show Cause, Notice of Hearing and Warrant for Arrest of Alien (OSC) based on entry into the United States without inspection. His first wife divorced him on June 4, 1997, and he married his second spouse, M-V-¹, a U.S. citizen, on April 27, 2001, in [REDACTED]. On August 25, 2010, the petitioner was issued a Notice to Appear (NTA) in removal proceedings as an alien present in the United States without authorization. The petitioner filed the instant Form I-360 self-petition on November 23, 2011. The director subsequently issued several Requests for Evidence (RFE) that, among other things, the petitioner's wife subjected him to battery or extreme cruelty, the petitioner entered into his marriage with M-V- in good faith and was eligible for the bona fide marriage exemption from section 204(g) of the Act. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility on these grounds. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility.

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

The petitioner did not initially provide a personal affidavit. Instead, he included an affidavit from his friend, [REDACTED] who stated that the petitioner told him that M-V- “refused to appear for [an] immigration appointment” and left the marital residence she shared with the petitioner without telling him where she was going. Mr. [REDACTED] indicated that he “heard” the petitioner’s wife was living with another man, which caused the petitioner to be “emotionally and physically affected from this situation.” [REDACTED] the petitioner’s friend and former landlord, provided the same assertions in his affidavit, using virtually identical language. Neither Mr. [REDACTED] nor Mr. [REDACTED] indicated that they had witnessed any specific incidents of battery or extreme cruelty by M-V- against the petitioner.

In response to the first RFE dated December 1, 2011, the petitioner resubmitted the affidavits from Mr. [REDACTED] and Mr. [REDACTED]. He also submitted a personal affidavit in which he said that M-V- changed shortly after filing a Form I-130 petition on his behalf, that she declined to obtain an affidavit from her mother attesting to the bona fides of their marriage, and that she failed to appear for a scheduled immigration interview with him. He claimed that M-V- began an affair with another man and their marital relationship “began deteriorating in the beginning of 2003.” The petitioner asserted that M-V- “became aggressive and often argued with me,” threatening to report him to immigration and constantly demanding money. According to the petitioner, M-V- left him and when he went to her mother’s house to ask about her whereabouts, he found M-V- there with another man who threatened him. The petitioner indicated that he did not report this incident to the police “because I believed this will get me in trouble somehow,” and that he subsequently became depressed, experienced insomnia, and “lost interest in life.” The petitioner’s statements do not indicate that his wife’s behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In response to the director’s second RFE dated March 22, 2013, the petitioner submitted a second affidavit dated May 14, 2013, in which he noted that he became upset and depressed after he found out that his wife was cheating on him, and that he “can’t be peaceful after what occurred.” He provided a letter from his physician, Dr. [REDACTED] who stated that he had been treating the petitioner for major depressive disorder, generalized anxiety disorder, and insomnia since April 16, 2013. Dr. [REDACTED] asserted that the symptoms began after the petitioner’s wife left him and had become worse recently. The petitioner submitted an affidavit from his friend, [REDACTED] who stated that he “heard” that M-V- “did not communicate with [the petitioner] without any reason” and the petitioner consequently “was suffered by mentally and physically.” The petitioner, his physician, and Mr. [REDACTED] statements did not discuss any specific incidents of abuse or extreme cruelty or otherwise include probative information establishing that the petitioner’s wife subjected him to physical violence or extreme cruelty.

In response to the director’s third RFE dated June 18, 2013, the petitioner resubmitted his prior affidavit dated May 14, 2013, but did not include any additional statements with probative details describing alleged incidents of battery or extreme cruelty.

On appeal, the petitioner asserts that the director failed to give sufficient weight to his statements regarding M-V's alleged verbal abuse, her threats to call immigration authorities, and her ultimate abandonment of him. He also contends that the director failed to give sufficient weight to his physician's letter indicating that the petitioner was depressed as a result of his marital situation. The petitioner does not further describe the alleged abuse or discuss any specific incidents of battery or extreme cruelty in probative detail.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In this case, the statements of the petitioner, his friends, and his physician submitted below and on appeal did not discuss his M-V's behavior in probative detail and do not show that she ever battered 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). When viewed in the aggregate, the relevant evidence submitted below and on appeal is insufficient to establish that M-V- subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Entry into Marriage

The petitioner did not initially provide an affidavit. Instead, he submitted affidavits from two friends who primarily described M-V-'s alleged abuse against the petitioner. His friends did not describe any particular visit or social occasion with the couple or claim to have any personal knowledge of their relationship. The petitioner also submitted a copy of his marriage certificate, but this is evidence of his marriage rather than evidence of his good-faith entry into the marriage. Accordingly, the petitioner's initial evidence does not establish his good-faith entry into the marriage.

In response to the first RFE, the petitioner provided an affidavit dated February 16, 2012, in which he said he and his wife were initially happy, but that their relationship changed after she filed a Form I-130 petition on his behalf. The remainder of his affidavit focused on the claimed abuse in the marriage. The petitioner did not describe in probative detail how he met M-V-, their courtship, wedding ceremony, joint residence, or any of their shared experiences, apart from the claimed abuse. He resubmitted the two affidavits from his friends, but these do not contain probative information that establishes his good-faith entry into the marriage. The petitioner included undated photographs taken with M-V-, but these were in unknown locations and do not establish his good-faith entry into the marriage.

In response to the second RFE, the petitioner submitted a new affidavit dated May 14, 2013, in which he claimed that his affair with M-V- was the cause of his first marriage's demise, and that he divorced his first wife "around 1999-2000 because I was involved with [M-V-]." This contradicts information in the divorce affidavit showing that the petitioner's first wife divorced him in 1997. The petitioner asserted that he bought M-V- jewelry worth \$6,000, worked hard to support her, and was happy when they married. The petitioner submitted a copy of a two-year lease for the period of May 1, 2001 to April 30, 2003; however, only the petitioner signed the lease. He also submitted a copy of their state and federal tax returns for 2002 and 2003. The petitioner did not sign any of the

returns, and there is no evidence that he filed them with the New York State or the Internal Revenue Service. Moreover, he indicated on his federal and state tax returns for 2003 that he was single. Accordingly, none of these documents contain probative information to establish the petitioner's good-faith entry into the marriage. The petitioner's response to a third RFE was identical to his second RFE response and therefore the director properly determined that the record below did not establish the petitioner's good-faith entry into the marriage with M-V-.

On appeal, the petitioner contends that the director failed to give sufficient weight to the lease and tax returns, to explain why either of these documents needed to contain both parties' signatures or why the tax returns should have been filed. Since the petitioner provided these documents as evidence of his good-faith entry into the marriage, the director properly considered that the lease was at most evidence that the petitioner may have resided with M-V-, and that the unsigned, unfiled tax returns had no probative information showing the petitioner's intentions at the time of his marriage to M-V-. Traditional forms of documentation are not required to demonstrate that a self-petitioner entered into his 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). Nevertheless, below and on appeal, the petitioner has failed to provide probative information of his courtship, wedding ceremony, joint residence, and shared experiences with M-V-. The petitioner has not established by a preponderance of the evidence that he entered into marriage with M-V- 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 record reflects that section 204(g) of the Act bars approval of the petition. As discussed, agency records show the petitioner entered the United States without inspection on April 24, 1992. On that same day the agency served him with an OSC.² His first wife divorced him on June 4, 1997, and he married his second spouse, M-V-, a U.S. citizen, on April 27, 2001, in [REDACTED], [REDACTED]. On August 25, 2010, the petitioner was issued a Notice to Appear (NTA) in removal proceedings as an alien present in the United States without authorization.

In the June 18, 2013 RFE, the director advised the petitioner that service records show the petitioner married M-V- while he was in deportation, exclusion, removal or judicial proceedings and that section 204(g) of the Act applied. The director provided the petitioner with the requirements for requesting a bona fide marriage exemption, but the petitioner did not respond to this portion of the director's notice.

On appeal, the petitioner confirms that he entered the United States on April 24, 1992, was placed into immigration custody, and released on his own recognizance. However, he asserts that the agency did not serve the order to show cause on him or to the immigration court. Instead, he maintains that the agency first initiated removal proceedings when it issued the NTA on August 25,

² This OSC was issued under a separate A-file number that the petitioner also listed on the July 1994 Form G-325A, Biographic Information, which he filed with his 1994 Form I-589, Request for Asylum in the United States.

2010. In fact, the agency records reflect that the 1992 OSC was served on the petitioner by personal service, as the certificate of service on the OSC is signed and dated by the Special Agent who served it on the petitioner. In addition, agency records show that petitioner was scheduled for a master calendar hearing and his case went before an Immigration Judge on January 27, 1993.

The petitioner has never submitted a written request for a bona fide marriage exemption. Because the petitioner married M-V- 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 (5th 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 or her 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 or her 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 the marriage with M-V- 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.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Because the petitioner is not exempt from section 204(g) of the Act, he has also failed to demonstrate that he had a qualifying spousal relationship with a U.S. citizen and was eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that he was subjected to battery or extreme cruelty by M-V- during the marriage, that he married her in good faith, that he has complied with the requirements of section 204(g) of the Act, and that he has a qualifying relationship as the spouse of a U.S. citizen and corresponding eligibility for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence.

Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Chawathe*, 25 I&N Dec. at 369. Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.