

(b)(6)

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



U.S. Citizenship
and Immigration
Services

Date: **OCT 07 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)

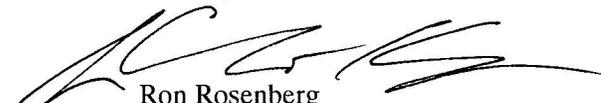
ON BEHALF OF PETITIONER:

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 Vermont Service Center director (“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 his former spouse, a United States citizen.

The director denied the petition for failure to establish the requisite battery or extreme cruelty, joint residence, and good-faith entry into marriage. On appeal, the petitioner, through counsel, submits a brief and other 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).

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 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)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

Facts and Procedural History

The petitioner is a citizen of Ghana who last entered the United States on July 5, 2002 as a nonimmigrant J-1 exchange visitor. The petitioner married his first United States citizen wife on December [REDACTED] in Ohio and they divorced on March [REDACTED]. On April [REDACTED] the petitioner married P-M-¹, a U.S. citizen, in Ohio and they divorced on June [REDACTED]. The petitioner filed the instant Form I-360 self-petition on April 6, 2012. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the requisite battery or extreme cruelty, joint residence, and good-faith entry into marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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.

Joint Residence

The director correctly determined that the petitioner did not reside with his former spouse during their marriage. The petitioner stated on the Form I-360 that he resided with P-M- from April 2006 to March 2012 and in his first affidavit, that around May 2011, P-M- "quit coming home for some time." However, the complaint for divorce, submitted for the record, states that the petitioner and P-M- have not resided together since December 9, 2010 and counsel affirms on appeal that the petitioner and P-M- separated in December 2010.³ The petitioner has not addressed this significant discrepancy or discussed in any of his three affidavits when and under what circumstances he and P-M- ceased residing together.

For the remaining claimed period of joint residence, April 11, 2006 to December 9, 2010, the petitioner submitted documents reflecting two addresses in [REDACTED] Ohio, one on [REDACTED] and one on [REDACTED]. A July 2006 energy bill reflects the [REDACTED] address and that the petitioner and P-M- were both listed on the account, and a joint lease for a residence on [REDACTED] indicates that they were to move in on April 1, 2008. Joint income tax returns for 2006 to 2009 showed a common address but were not certified, as noted in the director's denial decision. On appeal, the petitioner submits Internal Revenue Service transcripts for the returns, but each transcript names only the petitioner and does not indicate that he filed jointly with P-M-.

¹ Name withheld to protect the individual's identity.

² The record does not contain a divorce decree for the petitioner's marriage to P-M-, only the complaint for divorce filed by P-M- on March 6, 2012. Public records for the [REDACTED], Ohio Clerk of Courts, however, show that a decree of divorce was issued on June 1, 2012.

³ See counsel's appeal brief, page 3.

However, traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. 204.2(c)(2)(iii). In his affidavits, the petitioner did not describe his shared residences with P-M- in any probative detail. He did not, for example, describe their apartments, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with P-M- after their marriage. In his first affidavit, the petitioner indicated that sometime after P-M- graduated college in 2010, they decided to buy a house and moved from a two-bedroom apartment to a one-bedroom unit in the same complex. The petitioner did not provide the address of the smaller apartment and he did not state in his second or third affidavit that he and P-M- lived in two different apartments in the same complex. In his second affidavit, the petitioner stated that after they married, P-M- moved in with him at the [REDACTED] residence, and in March 2008 they relocated to [REDACTED]. In his third affidavit, submitted on appeal, the petitioner does not provide probative details concerning any marital residence. Affidavits of three friends were also submitted below, but none of the affiants stated that they had knowledge of the petitioner's claimed joint residence with P-M- or provided any probative information related thereto.

On appeal, counsel asserts that the petitioner has provided sufficient evidence to prove his common residence with P-M-. However, counsel's assertions and the petitioner's third affidavit provide no further probative information on appeal about the petitioner's claimed joint residence. The preponderance of the relevant evidence does not demonstrate that the petitioner resided with his former spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The director also correctly determined that the petitioner did not enter into the marriage with his former spouse in good faith. Counsel asserts on appeal that the petitioner was unable to obtain additional documents in support of his bona-fide relationship because they are in the possession of his former wife as explained in his second affidavit. 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). In this case, however, the affidavits of the petitioner and others do not establish his claim because they contain insufficient information regarding the petitioner's marital intentions as well as unresolved discrepancies. In the petitioner's first affidavit, he stated that before he married P-M-, they worked together for almost four years during which they got to know each other very well. He recalled that P-M- started to go to church with him, her family invited him for gatherings and they married on April 11, 2006. The petitioner stated that P-M- abused him before they married but showed how much she loved him through cards and letters some of which he submitted for the record. These items are from P-M- to the petitioner, however, and do not demonstrate his marital intentions toward her. The petitioner did not describe his first meeting with P-M-, the circumstances under which they began dating, or provide any probative details of their

courtship, wedding ceremony, alleged marital residences, or any shared experiences apart from the claimed abuse.

In his second affidavit, the petitioner stated that after getting married, P-M- moved in with him, they drove to and from work together and had the same schedule, spent lunch and break times with each other, and moved to an apartment complex in March 2008. He stated that when he and P-M- separated, he left everything behind including their dog, Tubby, and most of their family photographs. The petitioner did not identify the date on which they separated or discuss the circumstances. He added that when he and P-M- married, she automatically became the beneficiary on his employer-provided retirement account and he submitted a May 9, 2013 account statement on which she is listed as beneficiary. The petitioner did not explain why P-M- was still designated as his beneficiary nearly one year after they divorced. Neither of the petitioner's affidavits submitted below describe in probative detail his first meeting with P-M-, their courtship, wedding ceremony, marital residence, or any shared experiences apart from the claimed abuse.

The Bankruptcy documents submitted below show that the petitioner filed individually for Chapter 13 relief on October 19, 2010 during his marriage. The petitioner stated in his first affidavit that he had to file for bankruptcy because P-M- did not want to help with the bills he incurred while she was in school, however, the Trustee's Report states the petitioner filed for bankruptcy "because of immigration issues and fees and got behind." The petitioner does not acknowledge this difference, but instead submitted copies of bank, credit and insurance cards showing that the petitioner and P-M- shared various accounts and coverage. Photographs of the former couple also show them together on their wedding day, on three other occasions and separately with their dog. Nonetheless, without a probative account of the petitioner's relationship with P-M-, these documents are insufficient to establish that he married her in good faith.

The petitioner also submitted below the affidavits of three friends. [REDACTED] stated in her affidavit that she has known the petitioner and P-M- for six years and "witnessed the good times and the rough times of his marriage." In their affidavits, [REDACTED] identified themselves as very close friends of the petitioner. Mr. [REDACTED] stated that he has known the petitioner and P-M- for three years, they hang out every now and then, attend the same church, and he could tell that the petitioner was very proud of P-M- at church. Ms. [REDACTED] stated without explanation that she has "first-hand information and personal knowledge of the bona fides of the marriage" between the petitioner and P-M-, has known them since they were in a relationship, they go to the same church and got together most weekends. None of the affiants described any specific social occasions or provided probative information concerning the petitioner's relationship with P-M- or his marital intentions.

Moreover, the petitioner has not resolved the discrepancy regarding his relationship with Ms. [REDACTED]. As previously noted, Ms. [REDACTED] identified herself in her brief affidavit as a friend of the petitioner, whom she has known for six years. In the denial decision, the director states that during a March 12, 2012 interview with U.S. Citizenship and Immigration Services (USCIS), the interviewing officer confronted the petitioner with evidence that he fathered a child with Ms. [REDACTED] during his marriage to P-M-. The evidence presented was a birth certificate showing that the child was born on August 22,

2009 and named [REDACTED] and that Ms. [REDACTED] vanity license plate reads "[REDACTED]" In response, the petitioner replied that Ms. [REDACTED] is his cousin, her boyfriend's name is [REDACTED] and he (the petitioner) is not the only [REDACTED] in the world. On appeal, the petitioner states that he never had sexual relations with his cousin, has no children, "there are a lot of [REDACTED] out there," and the best person to ask who the father is, is the mother. On appeal, the petitioner provides no reasonable explanation for why Ms. [REDACTED] child bears his last name and he submits no supplemental statement from her. In addition to failing to resolve this issue on appeal, the petitioner does not provide any probative details of his claimed good-faith entry into the marriage in his third affidavit. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's former spouse did not subject him to battery or extreme cruelty as defined in the regulation, and the evidence submitted on appeal fails to overcome this ground for denial. In the petitioner's first affidavit, he stated that around mid-2008, he and P-M- began working different shifts and she made new friends at work and started drinking and smoking secretly. The petitioner stated that this led to an argument in June 2008 during which P-M- hit his face which had to be stitched at the hospital. He added that P-M- used immigration to threaten him "whenever she physically abused" him, but he did not describe any other battery apart from the June 2008 incident. The petitioner submitted six photographs showing what appears to be a sutured laceration on his left cheek. In response to the second RFE, the petitioner submitted a medical report from [REDACTED] which states that he presented with a laceration under his left eye on April 19, 2008 and told hospital personnel that his spouse hit him in the face. The date in the hospital report is inconsistent with the petitioner's first affidavit in which he stated that P-M- injured his face in June 2008. The petitioner did not address this discrepancy in his second affidavit and it remains unresolved on appeal.

In his first affidavit, the petitioner also recounted that after her income increased, P-M- opened her own bank account and refused to help him with the bills, he had to file a bankruptcy petition, and she started staying out late with new friends. He indicated that his health was adversely affected by P-M- not wanting to see or hear from him, so he went for a stress echo test. [REDACTED] a nurse practitioner, wrote in a brief letter that the petitioner was seen in her office on February 17, 2011 for a stress test and on February 23, 2011 for a doctor's appointment. As noted in the second RFE, neither the letter nor a related billing statement provide any information concerning the petitioner's reason for either appointment or a diagnosis related thereto. The petitioner did not address this deficiency in his second affidavit and also provides no explanation on appeal.

The petitioner further stated that around May 2011, P-M- stopped coming home for some time, he later learned she was dating a woman, and one night he discovered the two having intimate relations. The petitioner recalled that P-M- insulted his sexual prowess and that she and her paramour began spending more time together, he would not see P-M- for weeks, she would not answer his telephone calls, and would instead send him photographs of her kissing the woman. The petitioner claimed that P-M- began spending less time at home beginning in May 2011 and the incident with the woman occurred

sometime thereafter in the marital residence. This assertion is inconsistent with the divorce complaint and counsel's appeal brief which both state that the petitioner and P-M- separated in December 2010.

The petitioner also submitted below the affidavits of three friends. [REDACTED] stated that she witnessed the petitioner "some years back" with stitches on his face and he told her P-M- had hit him, but she does not provide the date of the incident or provide any other probative information. [REDACTED] stated that he witnessed P-M- call the petitioner racially insensitive names and he apologized to the petitioner "on behalf of" P-M- for physically abusing him. Mr. [REDACTED] did not state that he witnessed any physical altercation or the effects of any battery on the petitioner, nor did he describe in probative detail any occasion during which he heard P-M- call the petitioner racial pejoratives. [REDACTED] stated that she started seeing the former couple less and less at church, saw the petitioner sulking around his house, and she even talked to P-M- who was not interested in what Ms. [REDACTED] had to say. She did not indicate that P-M- battered the petitioner or subjected him to extreme cruelty. The petitioner and the other affiants did not demonstrate below that P-M- battered him or subjected him to threats of violence, psychological or sexual abuse, or other conduct constituting extreme cruelty as defined in the regulation.

On appeal, the petitioner acknowledges in his third affidavit that the injuries to his face occurred on April 19, 2008 but he does not explain why he stated in his first affidavit that the incident occurred in June 2008. Counsel also asserts on appeal that the injury occurred in June 2008.⁴ Consequently, this discrepancy remains unresolved on appeal. The petitioner has also not provided any further information to show that his February 2011 medical appointments were related to P-M-'s battery or extreme cruelty. Even apart from these unresolved issues, the petitioner's affidavit on appeal does not contain any further probative information regarding the claimed abuse. The preponderance of the relevant evidence does not demonstrate 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.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The petitioner has not established that he entered into marriage with his former spouse in good faith and that during their marriage, he resided with her and she subjected him to battery or extreme cruelty. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these three grounds.

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). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.

⁴ See counsel's appeal brief at page 7.