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

(b)(6)

U.S. Citizenship and Immigration Services

Date: OCT 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:

SELF-REPRESENTED

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 for failure to establish that the petitioner entered into marriage with his wife in good faith and she subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a brief and a statement.

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.

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 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:

> *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 second marriage (upon which this petition is based). 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.

The eligibility requirements for a 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:

> (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.
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> * * *
>
> (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 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:

Evidence for a spousal self-petition –

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mauritania who entered the United States without inspection on an unknown date. On October 25, 2005, the Chicago Asylum Office issued the petitioner a notice to appear in removal proceedings for the adjudication of the petitioner's asylum application before an immigration judge. The petitioner married his second spouse, C-B-, a U.S. citizen, on February 11, 2006 in Kentucky.[1] On May 20, 2008, an immigration judge denied the petitioner's asylum application and ordered him removed. The Board of Immigration Appeals (BIA) dismissed the petitioner's appeal and denied a subsequent motion to reopen.

The petitioner filed the instant Form I-360 on March 6, 2012. The director subsequently issued a request for further evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage with his second wife and the requisite battery or extreme cruelty. The petitioner responded to the request with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims 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 below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his initial statement, the petitioner recounted that he met C-B- in Ohio and they wed on February 11, 2006 in Kentucky. He stated that he moved with C-B- and his children from his prior marriage into a modest home. The petitioner did not describe how he met his wife, their courtship, wedding, joint residence and shared experiences, apart from the alleged abuse.

The petitioner submitted letters from his friends, and C-B-'s parents, and indicated that they have personal knowledge of the petitioner's courtship and marriage to C-B-. However, their statements focus mainly on the alleged abuse and fail to provide any substantive information on the petitioner's good-faith entry into the relationship. stated that she and her husband socialized with the petitioner and C-B-, but she failed to provide any probative details about particular social events or other occasions with the couple. stated that he has knowledge of the petitioner's marriage to C-B-, but his one-sentence statement fails to provide any information to establish his personal knowledge of the relationship. stated that the petitioner and C-B- "seemed to be in love" and they are a "wonderful couple." She also does not provide any probative information on the petitioner's good-faith intentions in entering the relationship. stated that the petitioner and C-B- had "a sincere and respectful

[1] Name withheld to protect the individual's identity.

relationship" and they spent time with the couple. However, they do not discuss their interactions with the couple or further explain their personal knowledge of the relationship.

The petitioner submitted the following relevant documentation: a utility bill; a car insurance policy; tax returns for the years 2007 and 2010; a vehicle certificate of title; two residential leases; portions of two bank statements; an automobile loan statement; and four envelopes addressed to the couple. The automobile loan statement is addressed to both the petitioner and C-B- and the four envelopes show that holiday cards were mailed to the couple. However, the utility bill, car insurance policy and vehicle certificate of title are all in the petitioner's name only and are dated after the couple separated. The 2007 tax return shows that it was completed as married filing jointly for the petitioner and C-B-, but, as stated by the director, the petitioner did not provide evidence to show that it was actually filed with the Internal Revenue Service. The 2010 tax return is in the petitioner's name only as head of the household. One of the residential leases is in the petitioner's name only and is dated after the couple separated. The other lease is dated during the couple's period of joint residence and shows the couple's signatures; however, the petitioner only submitted one page of the seven page lease. The portions of the two bank statements are also incomplete with only the couple's joint address and account number. The petitioner did not submit the full statements with transaction histories to demonstrate that the accounts remained active. The director correctly determined that the petitioner failed to establish by a preponderance of the evidence his good-faith entry into the marriage.

On appeal, the petitioner submits an additional statement in which he claims that he and C-B- dated for six or seven months before they wed. He briefly recounts that during their courtship they went to the movies, had dinner together, went bowling and visited the zoo. The petitioner states that he introduced his two children from his first marriage to C-B- and she was accepted as their mother figure. The petitioner's brief description of his courtship with C-B- fails to provide probative details to establish his good-faith entry into the relationship. He also did not describe how he met his wife, their wedding, joint residence and shared experiences.

On appeal, the petitioner asserts that the previously approved petitions for alien relative (Form I-130s) filed by C-B- on behalf of himself and his two children clearly establish that he and C-B- had a good-faith marriage. The petitioner contends that the approval of the Form I-130 "sets a binding precedent" that establishes the good-faith marriage requirement of his immigrant abused spouse petition and the director failed to present clear and convincing evidence to "override" this previous determination. Although similar, the parties, statutory provisions and benefits procured through sections 201(b)(2)(A)(i) and 204(a)(1)(A)(iii) of the Act are not identical. The petitioner's wife was the petitioner and bore the burden of proof in the prior Form I-130 adjudication, in which she was required to establish her citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also his own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The regulations for self-petitions under section 204(a)(1)(A)(iii) of the Act further explicate the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). However, the regulations concerning spousal, immediate relative petitions contain no similar evidentiary requirements to establish the bona fides of the marriage except in cases of marriage fraud

(8 C.F.R. § 204.2(a)(1)(ii)); marriages entered into when the alien spouse was in proceedings (8 C.F.R. § 204.2(a)(1)(iii)); and marriage within five years of the petitioner's obtainment of lawful permanent resident status (8 C.F.R. § 204.2(a)(1)(i)).

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. The relevant documents show that the petitioner and his wife were jointly responsible for an automobile loan and they signed a joint residential lease. However, the petitioner's brief description of his courtship with C-B- fails to provide substantive information on his good-faith intentions in entering the marriage. The petitioner also fails to discuss how he first met his wife, their wedding, joint residence or any of their other shared experiences, apart from the alleged abuse. In addition, the petitioner's friends and in-laws do not provide probative details of their observations of the petitioner's interactions with or feelings for his wife during the couple's courtship or marriage. Accordingly, the petitioner has failed to demonstrate that he 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

Beyond the decision of the director, unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act, the petitioner's self-petition cannot be approved pursuant to section 204(g) of the Act because he married his second wife while he was in removal proceedings and did not remain outside of the United States for two years after their marriage.[2] 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 his second 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

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[2] A petition that fails to comply with the technical 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).

bona fides of his second 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.

Eligibility for Immediate Relative Classification

We also find beyond the decision of the director that the petitioner has failed to demonstrate his eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act, because he is not exempt from section 204(g) of the Act.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal also fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. The petitioner recounted in his initial statement that after one year of marriage, C-B- slapped him, called him names and yelled at him. He stated that on other occasions she threw various kitchen items at him. The petitioner stated that he felt isolated from his friends who were concerned about him. In response to the RFE, the petitioner stated that his wife's violent behavior started in 2007 and continued until "the incident of January 26, 2010" when he decided that the threat of potential violence towards himself and his children was too great. The petitioner, however, failed to discuss specific incidents of battery or extreme cruelty in probative detail.

The letters from the petitioner's friends also fail to demonstrate that the petitioner's wife subjected the petitioner to battery or extreme cruelty. stated that he witnessed C-B- throw an object at the petitioner and he noticed that the petitioner had injuries on his body. stated that he witnessed C-B- push the petitioner, throw objects at him and threaten him with deportation. They do not, however, discuss any specific incident of battery or extreme cruelty that they witnessed in probative detail, or provide any substantive description of their contemporaneous observations of the effects of any abuse on the petitioner. In addition, both affiants refer to the petitioner at one point in their affidavits as which is not the petitioner's name or an alias. Such a reference calls into question the veracity of the each affiant's statements.

The petitioner also submitted statements from his thirteen-year-old son, and his eleven-year-old daughter, The petitioner's children stated that they saw C-B- physically assault the petitioner at their home on two occasions in 2009, including throwing items at him and beating him with Christmas lights on Christmas day and throwing a candy dish at his head on Halloween. They also stated that on January 26, 2010, C-B- beat their father with a leather belt. Both of their statements are identical, which detracts from their credibility as probative evidence of abuse. In addition, the petitioner did not mention any of these incidents in his own statements submitted below and the petitioner's Form I-360 shows that he separated from C-B- in January 2008.

In his statement submitted on appeal, the petitioner recounts that in July 2007 C-B- tried to stab him with a fork and then threw it at him. He states that in August 2007 C-B- threw an ashtray and coffee mugs at him. The petitioner recounts that they tried to reconcile from October 2009 until January 2010 and during this time period C-B- hit his head with a candy dish at Halloween and she beat his legs with Christmas lights. He states that the last incident was on January 26, 2010 when C-B- beat him with a

belt. The petitioner names numerous incidents of physical abuse, but he fails to explain any particular incident in probative detail.

Additionally, the petitioner claims that C-B- beat him with a belt on January 26, 2010, but his criminal record shows that he was arrested for domestic violence threats on that date.[3] The petitioner fails to discuss the particular the circumstances that resulted in his arrest and his ultimate conviction for disorderly conduct for which he had to complete an anger management class.

On appeal, the petitioner asserts that the statements he submitted describe instances of physical abuse that fall under the definition of domestic violence under federal and state statutes. Although the petitioner has indicated that he was subjected to numerous incidents of physical abuse, he has not described the abusive conduct in credible, probative detail. The statements from his children and friends are not credible for the reasons previously discussed, and they also fail to provide substantive information to support the petitioner's claims. His failure to provide an explanation of the circumstances behind his arrest for domestic violence threats and conviction for disorderly conduct also detract from the credibility of his claims. Accordingly, the petitioner has not established that his wife subjected him or his children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's grounds for denial. He has not established that he entered into his second marriage in good faith and was subjected to battery or extreme cruelty by his second wife. Approval of the petition is further barred by section 204(g) of the Act. Consequently, the petitioner also has not established that he is eligible for immediate relative classification based on his second marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[3] The petitioner's criminal records reflect that on January 26, 2010 he was arrested for domestic violence threats in Ohio. He submitted a court docket, which shows that he entered a plea agreement and was convicted of disorderly conduct after he completed an anger management class.