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: SEP 04 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:

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 that she subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) 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 immigrant classification as an abused spouse under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

> (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.
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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 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, the following:

> (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 is a citizen of Nigeria who entered the United States on August 20, 1998 as an F-1 student. The petitioner wed R-M-, a U.S. citizen, in Florida on July 22, 2005.[1] The petitioner filed the instant Form I-360 on January 31, 2011. The director subsequently issued two Requests for

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

Evidence (RFEs) of, among other things, the petitioner's good-faith entry into the marriage and his wife's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The additional evidence submitted on appeal fails to overcome the grounds for denial. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his first statement, the petitioner recounted that he met R-M- at a party and they dated for seven months before their marriage in July 2005. In the affidavit he submitted in response to the first RFE, the petitioner briefly recounted that during his courtship with R-M- they went out to eat on different occasions and visited Disney World. In response to the second RFE, the petitioner addressed the inconsistences noted by the director regarding the petitioner's prior marriages, children, and residence with R-M-, but did not further describe his good faith intentions in entering the marriage. The petitioner failed to probatively describe how he met his wife, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

In response to the RFEs, the petitioner submitted letters from his friends, He also submitted a letter from an individual who only provided his last name, and a letter from an unnamed individual with an illegible signature. Mr. only focused on the alleged abuse in the marriage. Mr. stated that he has known the couple for five years and attended their marriage ceremony, but he did not further describe his knowledge of the marital relationship. Mr. and Mr. stated that they visited the couple at their residences. However, neither of them described any particular visit in probative detail. The letter from the unnamed individual simply stated that he or she has known of the couple's five year marriage, but did not further elaborate on this knowledge.

The petitioner submitted the following relevant documents below: a car insurance policy; telephone statements; medical statements; earnings statements for various months during the period of 2005 through 2010; investment statements; statement of salary and benefits; bank statements; Internal Revenue Service (IRS) tax return transcripts for 2009; undated greeting cards; and undated photographs taken at unidentified locations. The car insurance policy and bank statements reflect that the couple had joint accounts and the three undated greeting cards are from the petitioner to R-M-. Two miscellaneous documents, a patient registration form, dated August 2, 2007, and an unidentified, undated statement, list the petitioner as married. However, the telephone statements, investment statements and medical statements are in the petitioner's name only. The petitioner's statement of salary and benefits shows that he had individual coverage on his health insurance. His earnings statements show that with the exception of a few months in 2006, his taxable marital status was single. The IRS transcript shows that the petitioner and R-M- individually filed their 2009 tax returns.

On appeal, the petitioner submits affidavits from his friends and evidence that he added R-M- to his vision insurance. The petitioner's friends, state that they visited the couple at their residences and his friend, stated that the couple lived in her apartment complex. However, none of these individuals describes in probative detail any particular visit or social occasion with the couple. In addition, some of the text in the affidavits is repeated verbatim, which detracts from their value as credible, probative evidence of the individuals' personal knowledge of the relationship. The petitioner's vision insurance benefits plan shows his spouse as a dependent, but it contains an effective date of November 1, 2013, three years after he claims he separated from his spouse.

In denying the petition, the director determined that the petitioner failed to demonstrate commingling of resources or shared finances. However, 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." 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner does not provide any detailed, probative information regarding his intentions in marrying R-M-. The petitioner does not substantively discuss the couple's courtship, wedding, shared residence and marital experiences, apart from the alleged abuse. The petitioner's friends also fail to provide probative details of their personal observations of the couple's relationship. 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.

Battery or Extreme Cruelty

The record also fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his first statement, the petitioner recounted that his wife criticized him, argued over finances and called him names. In his second statement, the petitioner stated that his wife controlled, ignored, isolated and intimidated him, and she called him names and withheld sexual relations. The petitioner, however, failed to provide probative descriptions of any specific instances of claimed abuse.

In response to the first RFE, the petitioner provided a psychological evaluation from Ph.D, who diagnosed him with posttraumatic stress disorder, major depressive disorder and dependent personality disorder. She linked the petitioner's dependent personality disorder to his "emotionally depressed childhood" and stated that the petitioner subsequently developed posttraumatic stress disorder and depression because of his wife's "extensive verbal abuse." However, she does not describe any specific instances of claimed abuse in her evaluation.

The petitioner also submitted in response to the first RFE, a letter from his physician, who stated that the petitioner suffers from anxiety and insomnia because of "turmoil with his marriage." Dr. letter does not indicate that the petitioner was ever battered or subjected to extreme cruelty.

The statements from the petitioner's friends also failed to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. and Mr. stated that they witnessed R-M- calling the petitioner names. stated that the petitioner told him about his "family conflict." None of these individuals indicate that the petitioner's wife battered him or that her behavior involved threats of 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).

On appeal, the petitioner submits an addendum to the psychological evaluation from Ms. in which she diagnoses the petitioner with major depressive disorder. Ms. stated that she had another meeting with the petitioner and during the interview he recounted that R-M- "drank alcohol heavily" and after a bout of drinking would call him names. He described one incident where R-M- hit him on the head with a piece of wood. The petitioner also recounted that he separated from R-M- in December 2010 after she physically assaulted him. However, the petitioner did not make either of these claims in his two statements and he provides no explanation for the inconsistent claims regarding the date of separation from his wife.

On appeal, the petitioner also submits a letter from his employer, with Mr. recounted in a one-sentence statement that the petitioner informed him that his wife was verbally abusive. He did not further elaborate on his knowledge of the claimed abuse. The statements submitted on appeal from the petitioner's friends also failed to demonstrate that the petitioner was subjected to battery or extreme cruelty. Mr. stated that R-M- called the petitioner names and was critical of the petitioner. Ms. made nearly identical assertions in her affidavit. Neither of these statements indicates that the petitioner was subjected to battery or extreme cruelty, as that term is defined in the regulation. Mr. stated that R-M- verbally and physically abused the petitioner, but he failed to describe any specific instance of abuse that he has knowledge of or witnessed.

In sum, the preponderance of the evidence fails to establish that the petitioner's wife battered him or that her behavior involved threats of 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). Accordingly, the petitioner has not established the requisite battery or extreme cruelty required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner failed to establish that he entered into the marriage in good faith and was subjected by his wife to battery or extreme cruelty. 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.