

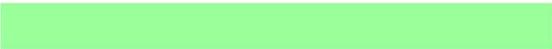


U.S. Citizenship  
and Immigration  
Services

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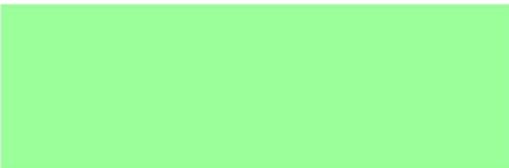
Date: Office: VERMONT SERVICE CENTER FILE: 

SEP 18 2014

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 Administrative Appeals Office (AAO) dismissed the petitioner’s appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The appeal will remain dismissed and the petition will remain denied.

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 spouse, a United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty, that he entered into his marriage in good faith, and that he is a person of good moral character. On appeal, the petitioner established his good moral character, but did not overcome the remaining grounds of denial.

On motion, the petitioner submits additional evidence.

#### *Relevant Law and Regulations*

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts

of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . 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.

\* \* \*

(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 Venezuela who entered the United States on December 3, 1994, as a nonimmigrant visitor. The petitioner married a U.S. citizen on February 14, 2004, in Pennsylvania. The petitioner filed the instant Form I-360 self-petition on December 23, 2010. The director denied the petition and counsel timely appealed. The director denied the petition for failure to establish that the petitioner's wife subjected him to battery or extreme cruelty, the petitioner's good faith entry into the marriage, and his good moral character, and although we found that he had established his good moral character on appeal, we dismissed the appeal on February 14, 2013. The petitioner then submitted this motion to reopen.

The petitioner's submission, which includes a new affidavit from the petitioner's former partner, meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Accordingly, the motion to reopen is granted.

The AAO reviews these proceedings *de novo*. 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 and the new evidence submitted on motion fail to overcome the grounds for denial. The appeal will remain dismissed for the following reasons.

*Entry into the Marriage in Good Faith*

In our prior decision dismissing the appeal on February 14, 2013, we determined that the petitioner had not established that he entered into marriage with his wife in good faith because he failed to provide probative information regarding their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. In his declarations below, the petitioner stated that he and his wife met at their work place, became friends, shared a long commute and decided to get married. The petitioner related that the first three years of their marriage was good and that they were happy although they were unable to have children. The petitioner did not further describe how he met his wife, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the claimed abuse.

The petitioner submitted affidavits from friends who briefly stated that they were aware of the petitioner's marriage, but spoke predominately of the claimed abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. In his affidavit, [REDACTED] briefly mentioned that the petitioner and his wife married on February 14, 2004, that he invited them to visit him for a week, and that they are a happy and healthy couple. [REDACTED] stated that she knew the petitioner and his wife and that they developed a friendship that later grew to a love relationship. She indicated that she kept in contact with the petitioner and his wife through the telephone and that she was informed that after 2008 they separated. Mr. [REDACTED] and Ms. [REDACTED] did not provide any substantive information regarding their observations of the petitioner's interactions and relationship with his wife prior to and during their marriage. [REDACTED] stated that the petitioner was married to his wife, but mentioned only the alleged abuse and did not provide any information on the petitioner's intentions in entering into his marriage.

The petitioner submitted insurance information showing that he was covered by his wife's health plan and documentation regarding the business he owned with his wife. He submitted copies of credit cards and bank statements that did not reflect joint use of marital assets or payment for rent, utilities, or other shared living expenses. The photographs of the petitioner with his wife on a few unspecified occasions were not accompanied by any explanation of their significance. Before the director denied the petition, he notified the petitioner that the record contained a sworn statement dated March 7, 2007 by [REDACTED] who indicated that he was in an intimate relationship with and residing with the petitioner during the time the petitioner claimed to have been married to and residing with his wife. In response, the petitioner asserted that his relationship with Mr. [REDACTED] was over prior to his relationship with his wife, but he provided no further explanation to rebut Mr. [REDACTED] sworn statement.

On appeal, the petitioner submitted [REDACTED] credit card statements and copies of previously submitted photographs with brief captions. The [REDACTED] statements were addressed only to the petitioner, and while he included a letter from [REDACTED] stating that his wife was an authorized user on the account, there was no indication of the timeframe in which his wife was an authorized user, and the letter was dated several years after the petitioner and his wife's separation.

On motion, the petitioner submits a new affidavit by [REDACTED] in which he claims that he and the petitioner's relationship was over before either of them got married, and that the sworn statement he previously provided was made under duress.

On motion, the petitioner still fails to provide any probative details regarding his and his wife's courtship, engagement, wedding, joint residence, or any of their shared experiences. Mr. [REDACTED] now indicates that his prior sworn statement was made under duress during his immigration interview after the officer threatened him with detention. Regardless of the veracity of this explanation, Mr. [REDACTED] does not discuss his personal knowledge, if any, of the petitioner's relationship with his wife or his marital intentions. The petitioner himself submits no additional affidavit, statement, or explanation on motion. When viewed in the totality, the preponderance of the relevant evidence submitted below, on appeal, and on motion does not establish that the petitioner 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*

On motion, the petitioner failed to submit any evidence in support of his claim that his wife subjected him to battery or extreme cruelty. As stated in our previous decision, the petitioner's statements and the supporting evidence previously submitted 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 his affidavits, the petitioner stated that his wife publicly humiliated him, called him names, insulted him, and threatened to have him deported. The petitioner also reported that his wife insisted he sign over his shares in their business, but that he refused and she threatened to sue him and to cancel her immigration petition on his behalf. The petitioner also stated generally that his wife called him at work and harassed him. The petitioner did not claim that his wife battered him. The petitioner's statements did 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).

The petitioner submitted an affidavit from [REDACTED] in which he stated that the petitioner's wife was aggressive, demanding and violent. Mr. [REDACTED] recalled that on one occasion the petitioner's wife tried to get the petitioner to sign a document giving her his shares in their company, and when he refused, she cursed at him and threatened to call immigration. Mr. [REDACTED] description lacked probative detail and did not describe any specific behavior that involved extreme cruelty. The petitioner also submitted an affidavit from [REDACTED] who stated that in 2008 she learned the petitioner's marriage was not going well and that he and his wife had separated, but did not mention any battery or extreme cruelty.

The petitioner also submitted a letter from a psychotherapist from the [REDACTED] that stated that the petitioner has been diagnosed with and was being treated for "major [sic] depression disorder with psychotic features/generalized anxiety disorder." The psychotherapist made no mention of the petitioner's wife or any abuse. Similarly, a letter from [REDACTED] certified that the petitioner was receiving psychotherapy and treatment for major depressive disorder with psychotic features and generalized anxiety disorder, but made no mention of the petitioner's wife or any abuse. The petitioner also submitted a Psychiatric Initial Evaluation form in which the psychiatrist reported that according to the petitioner, his wife verbally and emotionally abused him. The evaluation repeated some of the petitioner's claims but did not discuss any particular incidents of abuse in probative detail. The brief notes on the intake form provided no additional, substantive information regarding any particular incidents of extreme cruelty.

As the petitioner failed to submit any new, relevant evidence on motion, the petitioner has not established that his former wife 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 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). The petitioner has not established that he married his wife in good faith or that he was subjected to battery or extreme cruelty by his wife. Consequently, the appeal will remain dismissed and the petition will remain denied.

**ORDER:** The motion is granted. The February 14, 2013 decision of the Administrative Appeals Office is affirmed and the petition remains denied.