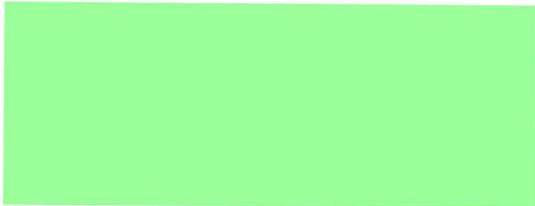


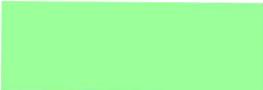


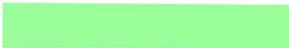
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 19 2014**

Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

PETITION: Self-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:

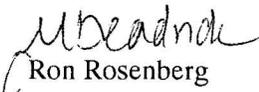


INSTRUCTIONS:

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 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner entered into marriage with his United States citizen spouse in good faith, and that she battered or subjected him to extreme cruelty during their marriage.

On appeal, counsel submits a brief and 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 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:

(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.

* * *

(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 Pakistan who entered the United States as an H-1B nonimmigrant on May 17, 2000. He married A-A-¹, a U.S. citizen, on June 2, 2009. The petitioner filed the instant Form I-360 on October 3, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty and entry into marriage in good faith. The petitioner timely responded with additional evidence, which the director found insufficient and denied the petition for failure to establish that the petitioner married his wife in good faith, and that the petitioner's wife battered or subjected him to extreme cruelty during the marriage. The petitioner timely appealed.

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

Good-Faith Entry into the Marriage

De novo review of the evidence submitted below fails to demonstrate that the petitioner married his spouse in good faith. In his affidavit, the petitioner stated that he was devastated after his wife and daughter died, and that his friend, [REDACTED] advised him to try to start another family. The petitioner stated that he placed matrimonial advertisements in a newspaper in March and April of 2009, and received responses to the advertisements from A-A-. The petitioner briefly described his first meeting with A-A- at a restaurant, subsequent meetings on Saturdays, and their decision to get married. He stated that he gave A-A- a wedding ring after they were married. The petitioner, however, provided only cursory statements about his first meeting with A-A-, their courtship, his decision to marry, and their honeymoon and no detailed description of their shared residence and experiences, apart from the claimed abuse.

In addition to his affidavit, the petitioner submitted a joint bank account statement from [REDACTED] an income tax return for 2009, a lease agreement for an apartment, and two complaints and two summons regarding a landlord/tenant action for nonpayment of rent. The apartment lease agreement lists the petitioner and his wife as occupants of an apartment located at [REDACTED] but the signature page of the lease agreement was not submitted. In addition, the petitioner's wife is the only named defendant in the two civil actions for back-rent for their apartment. The joint bank account is addressed to the petitioner and his wife at [REDACTED]. However, the bank statement covers only a one-month period from May to June of 2010, and reflects that the account had a negative balance and no monthly transactions. The 2009 income tax return is in the petitioner's name only and reflects his filing status as married filing separately. There is no evidence that the income tax return was ever filed with the Internal Revenue Service (IRS). Without a probative account from the petitioner of his intentions in marrying the petitioner, the evidence of a joint bank account, a shared residence, and an income tax return fail to demonstrate the petitioner's intent at the time of his marriage.

¹ Name withheld to protect the individual's identity.

On appeal, counsel asserts that the eligibility in this case is demonstrated by joint tax returns, the petitioner and his wife's "endur[ing] certain hardships together, like facing eviction," and their marriage ceremony. In making a decision on a self-petition the determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 204.2(c)(2)(i). The petitioner submits additional evidence of photographs, and his tax return transcripts for 2009, 2010, 2011, and 2012. The tax return receipts for the years 2009 and 2010 show his filing status as "Married Filing Separate." The 2011 tax return receipt also lists the filing status as "Married Filing Separate," and the return covers a period after the petitioner's separation from his wife in October 2010. The 2012 tax return receipt lists the filing status as "Single." Although counsel claims that the petitioner and his wife "endured certain hardships together, like facing eviction," the petitioner's wife is the only named defendant in the two civil actions for nonpayment of back-rent. The photographs in the record are of the petitioner and his wife together at their wedding reception and of unidentified individuals who attended the event, but without a probative account from the petitioner or other relevant evidence regarding his intent in marrying A-A-, the evidence of photographs, income tax records, and civil actions for back-rent are not sufficient to establish the petitioner's intentions in marrying his wife. When viewed in the totality, the relevant evidence does not demonstrate 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

De novo review of the evidence submitted below also fails to demonstrate that the petitioner's wife battered him or subjected him to extreme cruelty during their marriage. The petitioner stated in his affidavit that his wife ridiculed him for refusing to give her money for a wedding reception, and pressured and berated him until he gave her the money. The petitioner recounted that his wife criticized him, and that he was depressed and had headaches when he spent time with her. The petitioner stated that his wife yelled at him and threatened to tell the police that he was in the United States illegally and had abused her if he ever refused to give his salary to her. The petitioner described an incident in which his wife was upset and crying and refused to let him embrace her and ignored him at their evening meal. The petitioner stated that his wife came to his workplace demanding money and on one occasion the owner of the business, his cousin, [REDACTED] called the police due to his wife's belligerent behavior. The petitioner stated that upon the advice of the police he gave his wife some money and she stopped troubling him, but again demanded money from him in November 2010 and February 2011. The petitioner, however, did not describe any particular incident of physical abuse in detail or establish that his wife's behavior was part of an overall pattern of violence or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted a letter from Dr. [REDACTED] the petitioner's colleague at [REDACTED] stated that she observed that the petitioner has been "withdrawn and sad since his marriage." Dr. [REDACTED] stated that through conversations with the petitioner she learned about "intense verbal altercations he has had with his wife." Dr. [REDACTED] stated that the petitioner told her how A-A- depleted his financial assets and then tried to leave the house and abandon him. Dr. [REDACTED] stated that "[a]s a result of his marital issues, [the petitioner], has become withdrawn,

lonely, and has begun to show signs of depression.” Although Dr. [REDACTED] states that the petitioner’s signs of depression are the direct result of his wife’s actions, her statements are based upon conversations with the petitioner. Dr. [REDACTED] does not describe witnessing any incident first-hand, any specific incident of physical abuse, or establish that the petitioner’s wife’s behavior constituted extreme cruelty.

The petitioner submits no additional evidence on appeal regarding his claim of battery and extreme cruelty. Accordingly, when viewed in the totality, the petitioner has not demonstrated that his 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 petitioner has not overcome the director’s grounds for denial on appeal. He has not demonstrated that he married his wife in good faith, and that she battered or subjected him to extreme cruelty during their marriage.

In these proceedings, 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.