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U.S. Citizenship
and Immigration
Services

Date: **SEP 22 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,


f Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Acting 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 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 resided with his spouse, that he married his spouse in good faith, and that his spouse battered or subjected him to extreme cruelty during their marriage.

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:

(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 . . . 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.

Pertinent Facts and Procedural History

The petitioner was born in Mali, and entered the United States as a B-1 nonimmigrant visitor on September 25, 1997. The petitioner married G-M-¹, a U.S. citizen on June 20, 2007. The petitioner filed the instant Form I-360 on August 2, 2010. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's residence with G-M-, his good-faith entry into their marriage, and his wife's battery or extreme cruelty. The petitioner responded with additional evidence that the director found insufficient and the director denied the petition.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner argues that there is "clear evidence that this case has not been properly examined, and that it deserves the benefit of an interview before any decision is made." The regulations, however, provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, U.S. Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law that cannot be adequately addressed in writing. Additionally, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Battery or Extreme Cruelty

De novo review of the evidence submitted below and on appeal demonstrates that the petitioner was battered and subjected to extreme cruelty by G-M- during their marriage. In his initial affidavit, the petitioner stated that G-M-'s behavior changed after their marriage. He stated that she demanded money from him and would hit, kick, or punch him if he had no money to give her. He claimed that "[o]ne time she needed money and [he] didn't have it, she picked up something and smashed the window." The petitioner also claimed that G-M- did not drive and on one occasion "screamed and cursed at [him] and started hitting [him]" because he told her to be patient for his friend to arrive to give her a drive. The petitioner stated that another time G-M- was angry because he refused to let her or her friend borrow his friend's car. He then stated that she "grabbed [him] by the neck and began choking him . . . and then she threw [him] up against the wall. At that time, [he] was still suffering with broken ribs and a back injury and wearing a brace around [his] midsection." He described that while he wore braces, G-M- "hit [him] on the top of the head with a shoe" for no reason. He also indicated that she would hit him "with brooms, her fists, anything in her reach" and stole money from him to support her drug habit. The petitioner stated that he never called the police or made a formal complaint against G-M- because it is not the custom in his culture to involve police in domestic problems, and he was afraid of the petitioner, the police and of immigration and was embarrassed that he was abused by G-M-.

In his letter in response to the RFE, the petitioner stated that not long after he married G-M- "she punched me as she was driving the car. She was upset because my phone rang and I didn't answer it.

¹ Name withheld to protect individual's identity.

She thought I was cheating on her . . . She told me to get out of the car and called the police after pulling over. I had to take the bus to my friend's house that evening." He then described an incident in October 2009, when G-M- came to his workplace and took pictures of him and his car and that a week later his car was stolen. The petitioner stated that he was concerned that G-M- took the pictures to have him killed and told this to the police, however, no report was made.

In addition to his affidavit, the petitioner provided affidavits from three friends to further support his claim of abuse. [REDACTED] stated that during a visit to the petitioner's home, he was shocked to witness G-M-'s behavior towards the petitioner "when [the petitioner] was badly in pain after his feet got broken." He stated that G-M- was looking for cash in the pockets of the petitioner's clothes, and was angry that the petitioner did not have any cash. He indicated that the petitioner "tried to gather his belongings upside down from the floor suddenly she slapped him, pushing him to the point he hit the wall. . . . She walked out and took a big stone and hit the window." [REDACTED] stated that he has known the petitioner for more than eight years and during a visit at the petitioner's home, G-M- "entered and walked straight up to [the petitioner] and took him by his collar. She squeezed the shirt around his neck. . . . [The petitioner] tried to free himself but he was sick. She took the broom and hit [the petitioner] with the stick. He was bleeding on his hand. Because he tried to stop and block the stick." Mr. [REDACTED] further stated that G-M-'s actions were triggered by the petitioner's refusal to have a friend drive G-M-. [REDACTED] indicated that his aunt lived near the petitioner's house and that he got to know the petitioner on visits to his aunt's home. He described that he saw, outside the window of his aunt's house, G-M- "boxing" the petitioner on the head, "chuck" his neck, hit him with a trash can, then "smack" his head with her shoe. He stated that the fight started because the petitioner did not have all of the money that G-M- demanded.

In addition to the affidavits, the petitioner submitted photographs, a copy of G-M-'s criminal record, and a police report relating to the theft of his car on March 3, 2010. In denying the petition, the director stated that the petitioner did not provide the dates of the abuse, and that the petitioner's account of abuse had a "lack of detail." The director further stated that the petitioner's affidavit "is not supported by evidence such as medical records or police reports," and that the petitioner has not explained how G-M-'s criminal record relates to his claim of abuse. The director discounted the value of the affidavits from the petitioner's friends, finding that they did not provide the time and date of the abuse that they witnessed.

On appeal, the petitioner asserts that the director ignored the photographs of his injuries, and that "the purpose of the photographs was to corroborate the fact that [G-M-] would assault him while he was incapacitated." The petitioner also states that G-M-'s criminal record was submitted only to show that the petitioner "was the victim of an abusive person." The petitioner asserts that the director erroneously stated that the police report relating to the petitioner's stolen car is dated after the period that the petitioner lived with G-M-. Although the director correctly determined that the police report was dated March 15, 2010 and the petitioner indicated he last resided with G-M- in November 2009, abusive behavior that the petitioner would have been subjected to after his separation could still constitute part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(vi);

² Alternatively referenced in the record as [REDACTED]

See also *Hernandez v. Ashcroft*, 345 F.3d 824, 837 (9th Cir. 2003) (“effects of psychological abuse, coercive behavior, and the ensuing dynamics of power and control mean that “the pattern of violence and abuse can be viewed as a single and continuing entity”).

The petitioner submits additional affidavits from [REDACTED] his employer and friend, and [REDACTED] the spouse of [REDACTED] the petitioner’s medical documents, dated July 19, 2007; and letters, dated August 7, 2007 and August 22, 2007, from the Department of Orthopaedic Surgery at the [REDACTED]. The affidavits from [REDACTED] both state that since 2007, G-M- disrupted their business by demanding money from the petitioner in front of their customers. The medical documents reflect that on July 19, 2007, the petitioner was diagnosed with “complex open right foot fracture, T12 and L1/L2 fractures,” and was to “wear [a] back brace while upright or out of bed.” The letters stated that the petitioner had pins placed in his foot and that he had a short-leg cast.

Upon a full review of all the relevant and credible evidence, the petitioner has demonstrated that he was subjected to battery and extreme cruelty during his marriage to G-M-. The petitioner credibly described in probative detail the battery and extreme cruelty that he endured from G-M- during his marriage. The petitioner also provided affidavits from friends that credibly described witnessing first-hand the abuse. The preponderance of the evidence demonstrates that the petitioner’s wife subjected him to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Although the petitioner has overcome this ground for denial, additional grounds preclude approval of the petition.

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 initial affidavit, the petitioner stated that the first time he met G-M- was with his friends at a restaurant. He stated that G-M- was with her friends and that she introduced herself to the petitioner and after talking they exchanged phone numbers. The petitioner stated that a few days later G-M- called him and they went out together. He indicated that they saw each other often, enjoyed her company, and after a year they started talking about marriage. The petitioner claimed that when he was “picked-up by Immigration she asked [him] whether [he] was ready to get married. [He] told her that if [they] marry it should be for us to be together[,] not to fix any problems with Immigration.” The petitioner recounted that “[they] talked about it and decided that we should go ahead and get married.” The petitioner, however, did not provide a detailed description of the first time he met G-M-, his courtship, decision to marry, engagement, and marriage ceremony, and shared experiences with G-M-, apart from the abuse.

In his second affidavit, the petitioner stated that the evidence to support the bona fides of his marriage was submitted with his initial filing, and since G-M- “kicked [him] out of the house, [he] could not retrieve any other documents.” Traditional forms of joint documentation are not required to demonstrate a self-petitioner’s entry into the marriage in good faith. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). 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). The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. Section 204(a)(1)(J) of the Act; 8 C.F.R. 204.2(c)(2)(i). In this case, the petitioner’s statements do not provide a detailed account of his relationship with G-M-.

On appeal, the petitioner states that he “is attaching his recent statement and photographs that he was able to locate.” The photographs are pictures taken on unidentified dates and show the petitioner and his wife pictured either together, alone, or with other unidentified people. The petitioner offers no description of the occasions depicted. Although the petitioner indicated that a recent statement was submitted, the record contains no new statement from the petitioner on appeal.

When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with G-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

De novo review of the evidence submitted below fails to demonstrate that the petitioner resided with G-M-. On the I-360 the petitioner lists July 2007 until November 2009 as the period that he resided with G-M-. In his initial affidavit, the petitioner does not discuss in any detail his claimed marital residence, and the affidavits of his friends also do not provide any probative details about his marital residence. In the response to the director’s RFE, the petitioner submitted a letter in which he stated that from July 2007 to November 2009 his marital home was located at [REDACTED] Pennsylvania, and that on “multiple periods, some short and some long, that [he] would leave the house after an altercation and stay with a friend. That address is [REDACTED] PA.” The petitioner did not describe in further detail his claimed marital residence at [REDACTED] or any shared residential routines with G-M-. The director was correct in finding that the petitioner failed to demonstrate that he resided with G-M- during their marriage.

On appeal, counsel states that G-M- filed an Immediate Relative Petition (Form I-130) on behalf of the petitioner, and that the petition was denied for failure to appear and was sent to the marital address. Counsel states that he did not file the I-130 and is not certain of the documents that were filed in support of that petition. Counsel request that if these materials “have not been consolidated with this petition, kindly advise . . . so that we can FOIA these documents and supplement the instant record.” Counsel further indicates that “when the RFE was sent in this case [he] was unavailable for medical reasons . . . and the response was prepared without [his] assistance or review.” The regulation states that “[a]n affected party must submit the complete appeal including any supporting brief within 30 days after service of the decision.” 8 C.F.R. § 103.3(2)(i). Counsel’s request to supplement the record beyond the regulatory prescribed thirty days is,

therefore, denied.³ Additionally, the petitioner does not explain why he could not obtain evidence in support of his self-petition before filing the Form I-360.

The petitioner submits additional documents from [REDACTED] blank checks from [REDACTED] and photographs. The photographs are of the petitioner and his wife pictured together, alone, or with other people. The photographs are undated and not identified as being taken at the claimed marital residence. However, one of the photographs is a picture of the petitioner and an unidentified individual standing in front of a house having [REDACTED] as the street address, but again the photograph is not dated. The photocopies of two blank [REDACTED] checks list the same account number as the [REDACTED] information, but do not list the names of the petitioner or his wife or the [REDACTED] address. The [REDACTED] statements dated from September 2008 through September 2009, list the marital address at [REDACTED]. However, without a detailed description from the petitioner or a probative account from his friends about his marital residence, bank statements showing a joint address, undated photographs, and blank bank checks are not sufficient to establish that the petitioner and G-M- shared a marital residence. When viewed as a whole, the preponderance of the relevant evidence fails to demonstrate that the petitioner and his wife resided together, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has established that his wife subjected him to battery or extreme cruelty during their marriage. However, the record fails to establish that the petitioner resided with G-M- and entered into the marriage with her in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

³ The record does contain several documents filed with the Form I-130 such as photographs, an affidavit from [REDACTED] invoice, and [REDACTED] statements. The photographs are pictures of the petitioner and his wife taken together or with other unidentified people, but the photographs are undated and are not identified as being taken at the claimed marital residence. The letter from [REDACTED] stated that he has known the petitioner and G-M- since before they were married and that he would “exchange visits” with them, but he does not provide any detailed information about his visits to the petitioner’s claimed marital residence. The [REDACTED] invoice and [REDACTED] statements are in the petitioner’s name only. Given the deficiencies described in these documents, they would not have changed the outcome of our decision.