

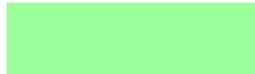
(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **SEP 29 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:

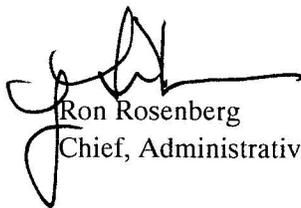
SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 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 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, they resided together and she subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a statement and additional evidence.

Applicable Law

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:

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.

* * *

(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, a citizen of Uganda, was admitted to the United States on December 18, 1999 as a temporary business visitor. He wed his second wife, S-W-, a U.S. citizen, on December 7, 2006 in California.¹ The petitioner filed the instant Form I-360 on September 21, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage, his residence with his wife, and the requisite battery or extreme cruelty. The petitioner responded 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 and the additional evidence submitted on appeal do not overcome the director's determinations 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 affidavit, the petitioner briefly recounted that he met his wife in 2006, they started dating and they wed at the end of 2006. He briefly stated that he and his wife went out to "parties, movies and dinner dates" and did "shopping, laundry and home cooking" together. The remainder of his affidavit focuses on the alleged abuse. In his affidavit submitted in response to the RFE, the petitioner added that he met his wife through a friend and they resided together with his wife's child from another relationship. The petitioner did not probatively describe how he met his wife, their courtship, engagement, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner submitted the following relevant documentation: several photographs of himself and his wife; bank statements and a letter from the manager of his bank; a residential lease and letter from the apartment building director; and a utility statement and cable statements. The bank statements and letter from the bank manager show that the petitioner and his wife had a joint bank account from 2006 until 2012. However, the photographs of the couple are undated and taken at unspecified locations. The lease shows that the petitioner's wife was added to his lease on March 19, 2007 and the letter from the community director of the petitioner's apartment building states that the couple resided together from December 26, 2006 until August 6, 2008. The community director, however, did not indicate that he ever personally interacted with the couple. The utility bill is in the petitioner's name only and the cable bills show that the petitioner's wife was solely responsible for the account.

The petitioner also submitted below four identical form-style affidavits from his friends [REDACTED]. Their statements are repeated nearly verbatim and the individuals only briefly contend that they have known the couple over a number of years or months. The brevity and repetition of these statements detracts from their credibility as evidence of

¹ Name withheld to protect the individual's identity.

these individuals' personal knowledge of the relationship. On appeal, the petitioner submits an affidavit from [REDACTED] who stated that the petitioner and his wife were their neighbors. They did not, however, describe any interactions with the couple or provide any other substantive information to establish their personal knowledge of the relationship.

On appeal, the petitioner asserts that the community director of the apartment building where he resided with his wife did not know all the residents personally, but he has submitted a letter from his former neighbors who can attest to his marriage. He contends that since his wife was not working and he lost his job, he had overdraft charges on his bank account. 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 his case, the petitioner submits evidence that he shared a bank account with his wife and that they had a joint lease. However, in his affidavits the petitioner does not probatively describe how he met his wife, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse. The affidavit from the petitioner's neighbors and the nearly identical form-style affidavits from his friends also fail to provide any information on 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.

Joint Residence

The record also fails to demonstrate that the petitioner resided with his wife. On the Form I-360, the petitioner stated that he resided with his wife from November 2006 until August 2012 and their last joint residence was an apartment on [REDACTED] California. Although the petitioner submitted a joint lease, bank accounts, utility and cable statements issued to the couple at this address, in his affidavits he does not describe their home or shared residential routines in any detail, apart from the alleged abuse. The petitioner's friends and neighbors state that they have knowledge of the couple's joint residence, but they do not describe any visit to his and his wife's residence. The photographs submitted by the petitioner are also not identified as having been taken at any specific residence that the petitioner shared with his wife. Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record also fails to establish that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. In his first affidavit, the petitioner recounted that after his lost his job in 2008 he and his wife argued over finances and she called him names and threatened him. He stated that his wife abused drugs and frequently left their home. The petitioner recounted that his wife physically assaulted him and his roommate called the police. He stated that she then left the home without telling him her whereabouts and in early 2009 he learned that she was arrested and

incarcerated for shoplifting. The petitioner recounted that his wife later had an extramarital affair and she attempted to reconcile with him and then she abandoned him. In response to the RFE, the petitioner stated that due to his wife's criminal record and her threats he was afraid to contact the police. He stated that his neighbor called the police on one occasion but he could not obtain the record. The petitioner's discussion of the claimed abuse fails to probatively describe specific incidents of battery and extreme cruelty during the couple's marriage.²

The petitioner submitted internet print-outs from the Superior Court of California, [REDACTED] County, showing that his wife has a criminal record. However, in his initial affidavit he stated that his wife was arrested for shoplifting and he did not indicate that her criminal record is in any way related to his claims of battery and extreme cruelty.

The affidavits from the petitioner's friends also fail to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. [REDACTED] stated that the petitioner's wife left the couple's home for days and she knew of "name calling." [REDACTED] also stated that the petitioner's wife left the couple's home for days and the couple fought over money. [REDACTED] stated that the petitioner's wife would leave the couple's home for weeks at a time. [REDACTED] stated that the couple argued over money and housekeeping and the petitioner's wife did not want him to speak his native language. These statements do not indicate that the petitioner's wife ever battered him or that her 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).

[REDACTED] stated that the petitioner's wife locked him out of his home at night. The petitioner, however, in his affidavits does not describe ever having been locked out of his home by his wife. Mr. and Ms. [REDACTED] also stated the couple yelled at each other in public and that in 2009 the petitioner's wife disappeared for several weeks and then returned. However, these incidents are not behaviors that constitute battery or extreme cruelty, as that term is defined in the regulation.

On appeal, the petitioner asserts that his wife called him names, locked him out of their home and cursed at him. The petitioner's brief, one-sentence statement of the abuse fails to provide any probative details to substantiate his claims. The petitioner's two affidavits also lack probative details of the claimed battery and extreme cruelty. His friends describe a troubled marriage, but none of their statements indicate that the petitioner was subjected to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's neighbors state that the petitioner was locked out of his home, but he did not describe this incident in his affidavits and their descriptions of the other incidents are not behaviors that constitute battery or extreme cruelty. Accordingly, the petitioner has not established 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.

² The petitioner's statements regarding the police officer's visit to his home after he was allegedly physically assaulted also contain inconsistencies. He initially claimed that police officers came to his home after his roommate called the police station, but in response to the RFE, he stated that it was his neighbor who contacted the police station and as a result he could not obtain the police report.

Conclusion

On appeal, the petitioner has not demonstrated that he entered into marriage with his wife in good faith, they resided together and she subjected him 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.