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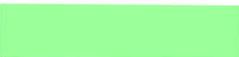
U.S. Citizenship  
and Immigration  
Services



Date: **SEP 30 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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting 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 a United States citizen.

The director denied the petition because she determined that the petitioner failed to establish that he resided with his wife, that she subjected him to battery or extreme cruelty during the marriage, and that he entered the marriage in good faith.

On appeal, the petitioner submits a brief and additional documentation.

*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 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 explained further 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 standard and 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:

(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 Cambodia and entered the United States on September 9, 2007, as a K-1 nonimmigrant fiancé. He married P-Y-<sup>1</sup>, a U.S. citizen, on September 25, 2007. The director subsequently issued a Request for Evidence (RFE) that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The petitioner failed to respond, and the director denied the petition. The petitioner subsequently claimed that he did not receive the RFE, and the director reopened the matter and issued a second RFE that the petitioner resided with his spouse, was subjected to battery or extreme cruelty by his spouse during their marriage, and entered into the marriage in good faith. The petitioner responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, determining that the petitioner had not established that he resided with his wife, that she subjected him to battery or extreme cruelty during the marriage, and that he entered the marriage in good faith. The petitioner filed a timely appeal.

We review these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

### *Request to Review File*

The petitioner requested a copy of the record of proceeding (ROP) under the Freedom of Information Act, 5 U.S.C. § 552. In a letter dated December 10, 2012, he acknowledged that he received a copy of the ROP but asserted that it did not include "the USCIS' investigation notes, correspondence, photographs, audio records, statements, memoranda, etc. with regard to the USCIS' unannounced home 'visit' to [the petitioner] and his wife's apartment on November 18, 2008." The petitioner cited the regulations at 8 C.F.R. § 103.2(b)(7) and (16). On appeal, the petitioner reasserts that he is still waiting for the requested information "so he can properly respond in this appeal."

The regulation at 8 C.F.R. § 103.2(b)(7) provides, with respect to testimony, that "USCIS may require the taking of testimony, and may direct any necessary investigation [and that] . . . [w]hen a statement is taken from and signed by a person, he or she shall, upon request, be given a copy without fee."

The regulation at 8 C.F.R. § 103.2(b)(16) provides, in pertinent part:

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<sup>1</sup> Name withheld to protect the individual's identity.

*Inspection of evidence:* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs:

- (i) If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered . . . .

First, the adverse information that the director cited in the RFE and her final decision is not based on a signed statement from the petitioner; therefore, it is not testimony for purposes of 8 C.F.R. § 103.2(b)(7). Further, contrary to the petitioner's assertion, the regulation at 8 C.F.R. § 103.2(b)(16) does not require USCIS to provide him "with a full and complete copy" of the documents containing the derogatory information. Rather, the regulation requires USCIS to advise the petitioner of the derogatory information upon which an adverse decision will be based, and to offer him an opportunity to rebut the information and present information on his own behalf. *See also Ghaly v. INS*, 48 F.3d 1426, 1434 (7th Cir. 1995) (a summary of the grounds of the agency's revocation provided sufficient notice to the petitioner because "the regulations do not mandate an opportunity to view each and every statement"); *cf. Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009) (upholding a finding that a summary of derogatory information in an agency notice of intent to deny provided the petitioner with sufficient information to respond).

The petitioner suggested that "the *Ghaly* case refers to statutes that have since been discarded" rather than the above regulations and therefore does not apply. *Ghaly* refers to the regulation at 8 C.F.R. § 103.2(b)(3)(i) (1994), which contrary to the petitioner's assertion, has not been "discarded" but is now contained in the regulation at 8 C.F.R. § 103.2(b)(16)(i). The regulation cited in *Ghaly*, although codified in a new subsection, is identical to the current regulation. As discussed, the director properly gave notice of the derogatory information to the petitioner in accordance with this regulation.

On appeal, the petitioner cites to a case that he contends provides support for his request for a copy of the investigative materials. *See Dent v. Holder*, 627 F.3d 365 (9th Cir. 2010). However, the two cases are not analogous. In *Dent*, the Ninth Circuit Court of Appeals found that the agency was statutorily required to provide an alien in proceedings access to his A-file pursuant to 8 U.S.C. § 1229a(c)(2)(B), but instead withheld evidence of his mother's citizenship that would have resulted in a finding that would have been favorable to him. In the instant case, the petitioner is not in removal proceedings, and the agency has provided him a copy of his ROP in response to his FOIA request. To the extent that he claims that he does not have all of the investigative materials contained in his A-file record, the agency has properly notified him of the derogatory information that ultimately served as the basis of the director's denial in its RFE, and provided him an opportunity to address the information both in response to the RFE and on appeal.

The record shows that the director complied with the regulation at 8 C.F.R. § 103.2(b)(16) by advising the petitioner of the derogatory information that served as the basis for her denial and by offering the petitioner an opportunity to rebut the information and present information on his own behalf. Therefore, contrary to the petitioner's assertion, USCIS is not required to provide the petitioner with complete copies of the documents containing the derogatory information.

### *Joint Residence*

On the Form I-360 self-petition, the petitioner stated that he resided with his wife beginning on September 25, 2007, and that they “still live together” in an apartment on [REDACTED] Washington as of November 5, 2010, the filing date of the petition. In his initial affidavit dated October 20, 2010, the petitioner stated that he met and became engaged to P-Y- in Cambodia in February of 2006 and moved to the United States in 2007. He claimed that upon his arrival in the United States he lived in an apartment on [REDACTED] in Seattle for 16 days before he married his wife. He asserted that after the marriage they “found an apartment and began our married life together.” The petitioner then stated that P-Y- had a child with another man and then another affair that “eventually broke [his] family apart and [caused him] to move out,” and that they are “now separated.” The petitioner provided no specific details regarding his actual dates of residence with P-Y- and a description of their apartment, daily routines, and living arrangement with a roommate. The petitioner's record of proceeding contains an April 7, 2010 statement in which the petitioner asserted that he lived at the [REDACTED] address until the end of January 2008 and then moved to an apartment on [REDACTED] in Seattle. The record also contains a copy of the petitioner's Washington State Driver's license, which was issued to him at the address on [REDACTED] on February 23, 2008. Both his April 2010 statement and the driver's license showing the petitioner lived on [REDACTED] as of late February 2008, undermine the assertion in his October 2010 affidavit that he only resided on 19<sup>th</sup> Avenue until his marriage on September 25, 2007.

The petitioner also submitted affidavits from several friends. [REDACTED] indicated that she lives with the petitioner at the [REDACTED] apartment in Seattle and that they “have roomed together for a few years.” Ms. [REDACTED] explained that the petitioner's wife “does not stay at the apartment often,” and “when she leaves we never see her come home.” [REDACTED] stated that she “helped [P-Y-] and [the petitioner] rent and co-sign an apartment. There are some bills for that apartment that were in my name, but I never paid for any of it and they were responsible for all of it.” [REDACTED] confirmed that the petitioner's wife “has left to be with other men.” The petitioner's own affidavit and the statements of his friends indicated that the petitioner no longer lived with his wife as of the filing date of the petition and therefore contradict his claim on the Form I-360 self-petition to be residing with his wife. The inconsistencies in the petitioner's assertions and documentation detract from the credibility of his claims. In addition, his statements and those of his friends fail to provide probative information of claimed joint residence with P-Y-. Accordingly, these statements do not establish that the petitioner shared a joint residence with P-Y-.

With his petition, the petitioner included copies of 2007, 2008, and 2009 Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return, which reflect his name, his wife's name, and their address on [REDACTED]. However, because the tax returns are unsigned drafts and there is no evidence that they were filed with the IRS, they do not establish that the petitioner and his wife

resided together. The petitioner included monthly bank statements for periods ending on February 19, 2010, August 19, 2010, and September 21, 2010, a Vehicle Certificate of Ownership for a 1997 Toyota Corolla dated October 23, 2009, vehicle insurance, and various utility bills from 2010 reflecting the names of the petitioner and P-Y-, and the address on [REDACTED]. The record also contains a 2009 lease agreement between the petitioner, P-Y-, and [REDACTED] as well as utility bills reflecting that all three shared the apartment; however, as discussed, Ms. [REDACTED] asserted that the petitioner's wife visited rarely. Given the lack of details about the actual dates that the petitioner resided with P-Y-, these documents do not establish that the petitioner and P-Y- shared a marital residence.

In a second RFE, the director advised the petitioner of adverse information stemming from a November 18, 2008 site visit to the [REDACTED] apartment that the petitioner claimed was his shared marital address with P-Y-. The results of the site visit provided information that contradicted the petitioner's claims to have resided with the P-Y-, that she subjected him to battery or extreme cruelty, and that he married her in good faith. The director's RFE provided the petitioner with a detailed description of information obtained during the site visit and pointed to inconsistencies in the petitioner's evidence. For example, the director noted that Ms. [REDACTED] was living with the petitioner in the [REDACTED] apartment, but that P-Y- was not and that the petitioner did not have a single item of P-Y-'s clothing or mail at the claimed marital address. Instead, the petitioner's bedroom contained mail for [REDACTED]. The petitioner could not recall P-Y-'s phone number, but had memorized that of Ms. [REDACTED]. Ms. [REDACTED] and two children, who were the other occupants of the apartment, reviewed a photograph of P-Y- and then stated that P-Y- did not live in the apartment but that [REDACTED] sometimes spent the night in the petitioner's bedroom.

In response to the second RFE, the petitioner submitted a letter indicating that he married his wife in good faith and asserting that she subjected him to extreme cruelty. He did not explain how long they lived together, describe their marital residence, or otherwise provide any probative information regarding their joint residence.

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with his spouse. On appeal, the petitioner submits an affidavit from his wife, who asserts that they married and "found an apartment and there we created a home for ourselves, but does not name, describe, or provide the specific dates of their shared marital residence, residential routines, or otherwise provide probative information about their joint residence. Accordingly, the petitioner has not established by a preponderance of the evidence that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Battery or Extreme Cruelty*

In his initial affidavit dated October 20, 2010, the petitioner said that his wife had a child in 2009 with another man as a result of an affair, which caused "deep pain and difficulty" to their marriage; however, he chose to accept the child as his own. He attested that P-Y- continued to have affairs after that, so he moved out of the marital home but continued to care for her and his daughter financially. This contradicts his initial claim on the Form I-360 self-petition to be residing with his wife at the [REDACTED] as of November 5, 2010. The petitioner asserted that the marital

situation caused him to feel “significant stress and concern,” and that his wife said she would report their marriage as fraudulent if he did not continue to “financially support her as she would like to be accustomed.” He provided affidavits from several friends, all of whom attested that he was a nice person and that his wife cheated on him. None of the friends claimed to have witnessed episodes of battery or extreme cruelty by P-Y- against the petitioner or otherwise provided probative details of such treatment.

In response to the RFE, the petitioner submitted a psychological evaluation from a licensed mental health counselor. Based upon the petitioner’s account of his wife’s alleged treatment of him, the counselor diagnosed him with, among other issues, major depressive disorder (mild). According to the evaluation, the petitioner claimed that he and his wife never had sexual relations, they only had dinner together once or twice in five years, she threatened not to let him see the child that she fathered with another man, and she also threatened to kill herself if he did not give her money. The petitioner’s statements to the counselor 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).

On appeal, the petitioner asserts that his wife’s behavior included an extramarital affair and having a child as a result of the affair, “committing perjury to a government agency in order to collect child support, coercing and extorting [him] in order to collect child support” even though the child was not his, and ultimately abandoning the petitioner. This contradicts the claims in his initial affidavit that he voluntarily moved out of their home and that he chose to support his daughter financially, even though he was not the biological father and did not live with her. The petitioner provides a letter from P-Y- addressed to the [REDACTED] Washington indicating that she no longer wishes to collect child support from the petitioner, but he does not further describe any alleged battery or any other claimed incidents of extreme cruelty. The petitioner has repeatedly asserted that he “voluntarily and lovingly accepted” P-Y-’s daughter as his own, allowing his name to be placed on her birth certificate, and continuing to provide his daughter with financial support, so it is unclear why he claims on appeal that he supported his daughter as a result of “extortion.”

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, “evidence of abuse may include . . . other forms of credible relevant evidence.” 8 C.F.R. § 204.2(c)(2)(iv). In this case, the statements of the petitioner, his friends, and his counselor did not discuss his spouse’s behavior in probative detail and do not show that she ever battered him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner’s own statements about the extreme cruelty to which he claims his wife subjected him, including whether his wife abandoned him or he moved out and whether or not he voluntarily chose to financially support his daughter, are contradictory. When viewed in the aggregate, the relevant evidence submitted below is insufficient to establish that P-Y- subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good-Faith Entry into Marriage*

In his initial affidavit, the petitioner asserted that he met his wife when she visited Cambodia in

February of 2006, and that “they traveled extensively and began [their] courtship.” He indicated that they visited [REDACTED] and other attractions in [REDACTED]. He explained that his wife was sensitive to Khmer culture and spoke Cambodian well. They became engaged while she was still in Cambodia and married shortly after he arrived in the United States in 2007. The petitioner stated that his wife cheated on him and had a child with another man, but that he accepted the child as his own and worked very hard to support his wife and daughter. He indicated that his wife continued to have affairs, so he moved out. The remainder of his affidavit focused on the claimed extreme cruelty in the marriage. He did not describe in probative detail how he met his wife, their engagement ceremony, and their relationship and communication after P-Y- returned to the United States. Additionally, the petitioner failed to probatively describe his wedding ceremony, joint residence, or any of their specific shared experiences, apart from the claimed emotional abuse. He also submitted affidavits from friends. While his friends asserted that the petitioner loved and supported his wife even though she had cheated on him and they lived apart, these individuals did not describe any particular visit or social occasion with the couple, or provide any probative information regarding the petitioner’s marriage with his wife.

The petitioner submitted his marriage certificate, his daughter’s birth certificate listing him as the father, and IRS Forms 1040 for 2007, 2008, and 2009. The IRS Forms 1040 are uncertified, and without evidence of joint-filing. The petitioner submitted other documents, such as a 2009 lease agreement, monthly bank statements, a Vehicle Certificate of Ownership, vehicle insurance, and utility bills from 2010 reflecting the names of the petitioner and P-Y-. As previously discussed, the petitioner and his friends, including his roommate, Ms. [REDACTED] asserted that the petitioner’s wife rarely visited him. Although the documents reflect the petitioner and P-Y-’s names, his statements and those of his friends fail to provide probative information that establishes the petitioner married his wife in good faith.

In response to the second RFE, the petitioner cites to section 216(d)(1)(A)(i) of the Act, and asserts that his marriage is a qualifying marriage under that definition. However, that statute relates to petitions for removal of conditions on residence, whereas this proceeding is a petition for an immigrant abused spouse pursuant to section 204(a)(1)(A)(iii) of the Act. Even if the petitioner had established that his was a qualifying marriage for purposes of removal of conditions, he must still establish that he entered into the marriage in good faith for purposes of this petition. 8 C.F.R. § 204.2(c)(vii). The petitioner’s statement in response to the RFE did not include any additional information that would establish his good-faith entry into the marriage.

On appeal, the petitioner provided a statement from P-Y-, who states that she met the petitioner in February 2006, that they traveled around [REDACTED] and spent their time talking, having meals together and seeing the sites around the capital city. P-Y- did not indicate that she and the petitioner also visited [REDACTED] as the petitioner claimed in his initial affidavit. P-Y- confirmed that she cheated on the petitioner and had a child with another man, but asserted that she believes the petitioner married her “with love and honesty in his heart, and purpose for a life and family together.” The petitioner’s wife did not describe any specific dates, their engagement, wedding ceremony, joint residence, or any of their shared experiences.

The petitioner’s argument on appeal primarily focuses on his assertion that he cannot respond to the

director's denial without additional documents from the record. Neither his appellate statement nor that of his wife provides probative information of their courtship, wedding ceremony, joint residence, and shared experiences. The petitioner has not established by a preponderance of the evidence that he entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

On appeal, the petitioner has not demonstrated that he resided with his spouse, was subjected to battery or extreme cruelty by her during the marriage, and that he married her in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.