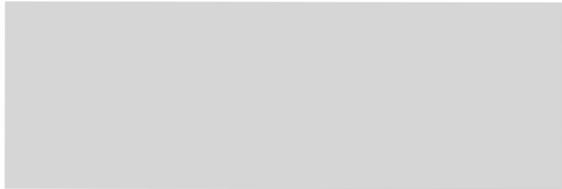




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 03 2015** 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:

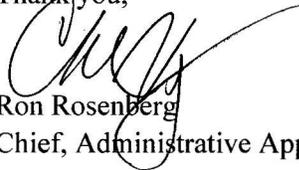


INSTRUCTIONS:

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,


67 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (“the director”), denied the immigrant visa petition, and upon motion by the petitioner, again denied the petition. 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 former United States citizen spouse.

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

On appeal, 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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 explained 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 explained 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 Nigeria who last entered the United States on January 11, 2009, as a nonimmigrant student. The record reflects that the petitioner married E-M-¹, a U.S. citizen, in [REDACTED] New Mexico on [REDACTED] 2010. The couple divorced on [REDACTED] 2011, in [REDACTED] New Mexico. The petitioner filed the instant Form I-360 self-petition on July 19, 2011. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty by E-M- and his good-faith entry into the marriage. The petitioner timely responded to each notice with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, granted a subsequent motion, and again denied the petition. The petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility and the appeal will be dismissed for the reasons stated below. Beyond the director's decision, the petitioner has also not established that he is eligible for immediate relative classification based upon a qualifying relationship with a U.S. citizen.²

Battery or Extreme Cruelty

The evidence before the director included the petitioner's three personal statements, a letter from a friend, psychological evaluations, and letters from treating physicians. On appeal, the petitioner submits an additional statement. We find no error in the director's determination that the petitioner's former wife did not subject him to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial.

In his statements, the petitioner prefaced the emotional trauma experienced during his marriage with his observation that E-M-'s family did not accept him due to his race. He stated that E-M- complained about his hectic work schedule, and that she was jealous and prone to rage. He said that his former wife insulted him, called him demeaning names, and drove his friends away from the marital home because of her volatile behavior. The petitioner indicated that E-M- began to bring men home, and that when he confronted one of the men she brought home in October 2010, he was slapped in the face and threatened at gunpoint to mind his own business. The petitioner did not indicate who slapped him or provide any probative details about this incident. He stated that when he confronted E-M- about her infidelity, she denied it and withheld intimacy. He described her over time as increasingly secretive and emotionally distant. They barely spoke, and when they did, she would threaten him with divorce and/or deportation. He stated that E-M- began to openly date other men with her mother's encouragement, and that he was devastated when E-M- confessed to him that she was pregnant with another man's child. The petitioner did not further give sufficient probative details regarding this or any other specific incidents of abuse to establish that E-M-

¹ Name withheld to protect the individual's identity.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

subjected him to battery or extreme cruelty. The petitioner also stated that in March 2011 he became afraid for his life and left New Mexico because he was assaulted by one of E-M-'s male friends to sign the divorce papers. He did not describe the particulars of this incident or demonstrate that E-M- responsible for the claimed assault.

_____ a friend of the petitioner, stated in his letter that the petitioner was his best friend for the past three years, and that Mr. _____ learned after a few months of the petitioner's marriage to E-M- that things were not going well and that E-M- cheated on him. Mr. _____ did not further describe observing any behavior by E-M- towards the petitioner that would constitute battery or extreme cruelty as defined by the regulation. The petitioner also submitted a psychological evaluation from psychologist Dr. _____ and letters from _____ MSN CNS, Dr. _____ MD., _____ APRN-BC, NP, and Dr. _____ Dr. _____ stated that she examined the petitioner in June 2011 at the request of his attorney. She stated that the petitioner told her that E-M- had fits of rage, called him names, excluded the petitioner from family outings because of his race, controlled his finances, and was openly unfaithful. Dr. _____ diagnosed the petitioner with severe depression and post-traumatic stress disorder (PTSD), with an increased risk of chronic depression and permanent damage to his ability to develop intimate relationships, due to the psychological trauma inflicted during his marriage to E-M-. While we do not question Dr. _____ professional expertise, E-M-'s behavior as described in Dr. _____ report did not establish that E-M- subjected the petitioner to actual or threatened violence, psychological or sexual abuse, or otherwise establish a pattern of extreme cruelty as defined by the regulation. The letters from the other medical professionals stated that they treated the petitioner for depression, anxiety, and/or medication management from 2010 through 2014. These letters briefly described the petitioner's difficulties in his marriage with E-M-, but did not describe any particulars of the claimed abuse or established a pattern of abuse or otherwise demonstrate that his depression resulted from E-M-'s treatment of him.

On appeal, the petitioner submits a fourth personal statement in which he asserts that E-M- refused to let him send money to his mother under threat of divorce and deportation, and that she spent their combined money recklessly, drank too much and was arrested for driving while intoxicated. He states that she insulted him and slapped him hard many times, and that he is demoralized. The petitioner does not, however, provide substantive information about any specific incidents of abuse to demonstrate that E-M- 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). On appeal, the petitioner also submits a letter from Dr. _____ the petitioner's psychologist in _____ Texas, who states that he treated the petitioner over the course of five 45-minute psychotherapy sessions in the summer of 2013. He reports that the petitioner told him that his former wife verbally and emotionally abused him in that she exploited him financially, belittled him in front of others, was unfaithful and became pregnant with another man's child. Dr. _____ diagnosed the petitioner with major depression and PTSD. However, Dr. _____ did not further describe any specific instance of abuse or pattern of behavior in probative detail. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner's 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.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to establish that he married E-M- in good faith and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains: the petitioner's statements; a letter from [REDACTED] the petitioner's landlord; utility bills; and bank statements. [REDACTED] the property manager at [REDACTED] stated that the petitioner and E-M- moved into the apartment on [REDACTED] in April 2010 and renewed the lease in July 2010. Mr. [REDACTED] letter did not indicate anything about the petitioner's intentions in entering into the marriage. The [REDACTED] joint bank account statements dated in April, July, August, September and December 2010 were addressed to the marital domicile and indicated that the petitioner had his paycheck and unemployment insurance checks directly deposited into the account. These statements did not indicate the source of the remaining deposits or transfers into the account or otherwise demonstrate that E-M- accessed the account. The February 2011 joint vehicle down payment is dated after the petitioner and E-M- separated.

Despite these deficiencies, 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." See 8 C.F.R. § 204.2(c)(2)(vii). In the petitioner's statements, he indicated that when he met E-M- in March 2009, he immediately fell in love and that he loved her sense of humor and care for the less fortunate. He indicated that his former wife was inspired to do well in school because of their relationship and that he shared with her what it was like to grow up in Africa. He described a visit to his sister and friends in [REDACTED] Texas in November 2009 to introduce E-M- to them, and stated that his sister approved of the proposed union. He stated that he did not meet E-M-'s family until December 2009, that E-M-'s family did not like him because of his race, but that he tried to win them over out of his love for E-M-. He briefly listed activities that they liked to do together and that they planned to have a family. The petitioner did not give further probative details about the wedding ceremony or shared residence or experiences of his married life with E-M-. The evidence, without further probative testimony, was insufficient to establish that the petitioner married E-M- in good faith.

On appeal, the petitioner submits another personal statement, additional letters, and copies of emails. In his statement, he indicates that when he met E-M-, he fell in love, and was committed to the marriage for life because of his upbringing. However, the petitioner does not give further details of his courtship, wedding ceremony and shared experiences apart from the claimed abuse. [REDACTED] of [REDACTED] Texas, states that he has known the petitioner for about 15 years. He recalls that the petitioner and E-M- were very much in love, committed to one another, and happily married, and that the couple came to visit him during Thanksgiving 2010. [REDACTED] the petitioner's sister, states that the petitioner was very happy to get married, and that the couple came to Texas to celebrate Thanksgiving as a family. Ms. [REDACTED] states that in March 2011 she visited her brother in New Mexico and that the couple was having difficulties. Ms. [REDACTED] does not describe with probative detail her observations of the couple's interactions or of their shared experiences. In his affidavit, [REDACTED] states that he observed the petitioner and E-W- as a

married couple in their home or in the community every other Friday since before their wedding in April 2010. Mr. [REDACTED] does not give any details of his observations of the couple's courtship, wedding, or of the dinners he had with the couple.

On appeal, the petitioner also submits copies of incomplete electronic mail letters dated in February, May, June and July 2010 in which he and E-M- each express affection for the intended recipient. These electronic mail letters are partially copied from another date and do not indicate the name of the recipient. The [REDACTED] bills dated from August – December 2010 are addressed to the petitioner at an address different from the shared marital address and the petitioner does not provide any information about these bills or explain what the evidence is supposed to establish. The petitioner submits a CD containing photographs from the wedding day, but does not submit copies of the photographs.³ Accordingly, the petitioner does not provide substantive information regarding his marital intentions sufficient to overcome the deficiencies of the record. When viewed in the totality, the preponderance of 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.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that E-M- subjected him to battery or extreme cruelty during their marriage and that he entered the marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 and the petition will remain denied.

ORDER: The appeal is dismissed.

³ We were unable to access any data on the CD.