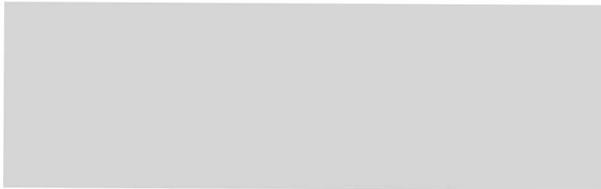




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: APR 23 2015

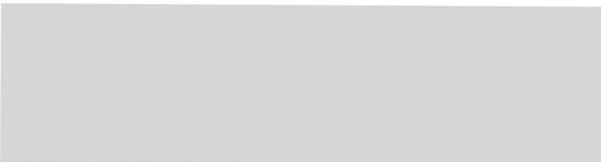
FILE#: [REDACTED]

PETITION RECEIPT#: [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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360) and the matter is now before the 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 entered into the marriage in good faith, and that he has been battered or subjected to extreme cruelty by his spouse. On appeal, the petitioner submits a brief.

*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 states, in pertinent part, that:

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:

(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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Ghana who entered the United States on December 27, 2003 as a B-2 nonimmigrant. The petitioner married Y-B-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2010, and he filed this

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

Form I-360 petition on November 18, 2013. The director issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty and good-faith entry into the marriage, to which the petitioner timely responded. However, the director found that the evidence in the record was insufficient to establish that the petitioner has been battered or subjected to extreme cruelty by Y-B- during the marriage. The director also found that the petitioner failed to establish good-faith entry into his marriage with Y-B-. The petition was subsequently denied on June 9, 2014. The petitioner submits a brief on appeal. He asserts that the evidence establishes his good-faith intent when he married and that Y-B- subjected him to a pattern of abuse amounting to extreme cruelty, and that the director applied an unreasonable standard of proof to his case.

We review these proceedings *de novo*. Upon a full review of the record, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

#### *Battery or Extreme Cruelty*

The petitioner does not claim that he was subjected to battery by Y-B-, and the record contains no evidence to establish such a claim. Rather, the petitioner asserts that Y-B- subjected him to a pattern of abuse amounting to extreme cruelty during their marriage. To support his assertion, the petitioner argues that Y-B-'s behavior meets the definition of extreme cruelty under New Jersey state divorce law. The record contains no evidence, however, that the petitioner or Y-B- filed for divorce in New Jersey or any other state, or that a divorce was obtained on the grounds of extreme cruelty. Further, extreme cruelty as a ground for divorce is defined in the New Jersey Statutes as "any physical or mental cruelty which endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant." N.J. Stat. Ann. § 2A:34-2(c) (West 2007). This definition differs significantly from the description of the term "battery or extreme cruelty" in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Moreover, although a state court's ruling on the dissolution of an alien's marriage may be relevant, it is never binding on a U.S. Citizenship and Immigration Services (USCIS) determination of the alien's eligibility for immigrant classification under section 204(a)(1)(A)(iii)(I)(bb) of the Act.

In the present matter the petitioner recounted in his initial statement, dated October 10, 2013, that he married Y-B- in [REDACTED] 2010, and that Y-B- began to mistreat him after he started working at a [REDACTED] store, around February 2011. He stated that Y-B- demanded his paycheck and did not allow him to participate in financial decisions. He claimed that she yelled at him when he returned home, and accused him of not going to work. The petitioner indicated that Y-B- also yelled at him about his use of utilities when he took showers or used the heat or air-conditioning. The petitioner recounted that Y-B- refused to drive him to work, resulting in his having to take two buses and spending up to four hours commuting. In addition, he indicated that Y-B- repeatedly threatened to withdraw her support for his immigration petition and to get him deported. The petitioner recounted that within a month of his obtaining a job, Y-B- threw him out of the house and threatened to have her adult children remove him if he did not leave. He indicated that he spent about three weeks at his co-worker's house but returned home after Y-B- called and apologized to him. The petitioner indicated that Y-B-'s behavior towards him was inconsistent, she became hostile towards him with no reason, and that she withdrew her support for his immigration petition after one of their fights. He stated that in April 2012 he asked Y-B- about their tax refund money and she "exploded" by throwing his belongings on their lawn in the rain,

telling him to leave, and refusing to return his computer to him. The petitioner indicated that he subsequently moved to a friend's house. The petitioner indicated that Y-B- refused his calls after April 2012, and that he went to the house three or four times to retrieve immigration and tax-related mail, but Y-B- refused to open the door. The petitioner stated that Y-B- also closed a joint bank account they had at [REDACTED] Bank.

In response to the director's RFE, the petitioner submitted a second statement, dated May 7, 2014. In his second statement the petitioner added that Y-B- did not allow him to see his friends when they lived together, insulted him, and would not allow him to eat African food in their house. He recounted that Y-B- gave him no money to go to work, forcing him to ask friends for money. He also indicated that he was unemployed and had to wear the same clothes for two months after Y-B- threw him out of their house in April 2012. The petitioner's statements lack detailed descriptions of specific instances of abuse he purportedly suffered, and discuss only generally, incidents of abuse.

Letters from the petitioner's friends also discuss only generally, incidents of abuse that the petitioner told his friends about. [REDACTED] stated in a letter, dated September 28, 2013, that the petitioner told him that Y-B- demanded all of his money after they married. He indicated further that at one point when he picked the petitioner up, all of his belongings were outside, and Y-B- refused to give the petitioner his laptop computer. [REDACTED] stated in a November 3, 2013 letter that the petitioner told him that Y-B- threw him out of their house about six months after his marriage. He indicated that the two reconciled about two months later, but that Y-B- subsequently threw the petitioner out of the house again, and that the petitioner appeared depressed after this and had no money for food. [REDACTED] indicated in an October 8, 2013 letter that Y-B- threw the petitioner out of the house sometime after February 2012, and that he bought food for the petitioner when he came to the [REDACTED] store distraught and hungry. The letters from the petitioner's friends each lack specific, probative details to establish that the petitioner was subjected to extreme cruelty. Similarly, a second letter from [REDACTED] submitted in response to the director's RFE, fails to demonstrate that the petitioner was subjected to extreme cruelty, as it adds only generally that Y-B- threw the petitioner out of his house on a second occasion prior to April 2012.

Four psychological reports contained in the record, dated between June and September 2013, also fail to demonstrate that Y-B-'s actions constituted extreme cruelty under 8 C.F.R. § 204.2(c)(1). The reports reflect that the petitioner attended counseling for a moderate condition of adjustment with mixed anxiety and depressed mood. Based on the petitioner's self-report of events, his condition was attributed to a combination of factors, including his separation from Y-B-, her withdrawal of support for his immigration petition, and uncertainty regarding his immigration situation in the United States. Although some of the reports generally reference "emotional distress," "trauma," and verbal, emotional and psychological abuse, the reports do not provide specific details regarding any particular instance of the claimed abuse.

Overall, the evidence in the record is general and lacks detailed information about specific instances of abuse that the petitioner purportedly suffered. Accordingly, the petitioner has failed to establish, by a preponderance of the evidence, that he was subjected to extreme cruelty by his spouse during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Good Faith Marriage*

The petitioner indicated in his initial statement that he met Y-B- in April or May 2010 at a mutual friend's barbeque. He stated that he asked Y-B- for her phone number and that they spoke on the phone about twice a week after that, usually on weekends. The petitioner generally recounted that he and Y-B- went to dinner several times, he fell in love and proposed to her over the phone, and they agreed that he should move into her home in August 2010. The petitioner recounted further that he and Y-B- married in a small ceremony at the downtown courthouse in [REDACTED] Delaware in [REDACTED] 2010, and that they had a small luncheon reception with about eight friends afterwards. In a second statement, submitted in response to the director's RFE, the petitioner stated that he and Y-B- shared a "loving bond" before her behavior changed towards him. He added information about Y-B-'s employment and work hours, and stated that he and Y-B- prepared and shared dinner, and went grocery shopping together on weekends. The petitioner also indicated that he did yard work on weekend mornings, and that he and Y-B- bought and drank beer or cognac at their home on weekends. The petitioner provided no details regarding any specific events or time shared together. In addition, his statements lack probative information regarding the couple's courtship, wedding, and shared residence and experiences.

Letters from the petitioner's friends also lack substantive information regarding the petitioner's relationship with Y-B- prior to his marriage, and regarding the petitioner's marital intentions. Initial letters from [REDACTED] and [REDACTED] reflect that the petitioner was already married to Y-B- when these friends met the petitioner. Further, [REDACTED] and [REDACTED] indicated only generally in their letters that the petitioner and Y-B- seemed happy and were affectionate with one another when they saw them. Similarly, [REDACTED] stated generally that he met Y-B- when she visited the petitioner at [REDACTED] that he attended their wedding, and that the petitioner and Y-B- seemed to be in love. The petitioner's friends failed to provide probative details and examples of interactions to establish the petitioner's good-faith intent.

Additional letters from [REDACTED] and [REDACTED], submitted in response to the director's RFE, fail to provide meaningful details regarding the petitioner's relationship with Y-B-. [REDACTED] added in a second letter that he visited the petitioner and Y-B- at their home and saw them living together. He did not further elaborate or describe this social interaction. [REDACTED] indicated in a second letter that he met Y-B- only one time around June 2012, when she came to the [REDACTED] looking for the petitioner.

The record contains evidence that the petitioner and Y-B- had a joint bank account; however, the evidence contains no account balance, transaction, or status information. In addition, the evidence reflects only that the bank account existed between March 14 and March 22, 2011. Health insurance card evidence reflects that the petitioner was listed as a dependent on Y-B-'s health plan, but lacks date of coverage information. Paystub information is in the petitioner's name only and also provides no probative information or insight into the petitioner's marital intentions when he married Y-B-.

Upon review, the statements from the petitioner and his friends discuss in only general terms his relationship with Y-B-, and documentary evidence is insufficient to demonstrate the petitioner's good-faith intent when he married Y-B-. Accordingly, the record fails to establish, by a preponderance of the

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*NON-PRECEDENT DECISION*

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evidence, the petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.