U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 1 4 2015

FILE #:
PETITION RECEIPT #:

IN RE: Petitioner:
AKA:

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:

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) 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 Director, Vermont Service Center (the Director), 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 a United States citizen.

The director denied the petition finding the petitioner did not establish that his spouse battered or subjected him to extreme cruelty and that he married his spouse in good faith. The petitioner submits a timely appeal.

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:

> (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.

* * *

(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 Cape Verde, was born in Senegal and last entered the United States as a B-2 nonimmigrant visitor on May 29, 2000. He married P-E-,[1] a U.S. citizen, on The petitioner filed the instant petition on March 20, 2014. The director denied the petition finding the record insufficient to establish that the petitioner's spouse battered or subjected the petitioner to

[1] Name withheld to protect the individual's identity.

extreme cruelty and that he entered into marriage with his spouse in good faith. The petitioner filed a timely appeal.

We review these proceedings on a *de novo* basis. A full review of the record, including the relevant evidence submitted on appeal, does not establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Battery or Extreme Cruelty

On appeal, the petitioner asserts that he submitted sufficient evidence "to establish a pattern of abuse" he endured from P-E-. The record indicates that the petitioner initially submitted a personal declaration dated January 23, 2014; an evaluation and a letter from licensed social workers dated November 18 and December 15, 2013; letters of support from his sister and cousins dated November 18, December 10, and December 26, 2013; and an undated letter of support from his friend. In response to a Request for Evidence, the petitioner submitted an additional personal declaration dated July 7, 2014, and a medical bill dated December 20, 2012. The petitioner does not submit additional evidence on appeal.

In his declarations, although the petitioner indicated that P-E-'s behavior "never turned physical," he stated that he endured extreme emotional and psychological harm because of P-E-'s "rants . . . screams, and tirades." He stated that in April 2012, P-E- requested him to move from their home about three weeks after their marriage because "she was having second thoughts." He further stated that he did not leave, but was subsequently fired from his job because he was depressed and unable to work. He also indicated that he initially moved out of their home in June 2012 upon P-E-'s request, but returned in September when she begged him to do so; he moved again in October 2012, but returned in November upon her request; and he moved a final time in January 2013 upon P-E- changing the locks to their home and throwing out his belongings. He also stated that he underwent an electrocardiogram test in July 2012 upon experiencing chest pains when he initially separated from P-E-. The petitioner indicated that P-E- belittled him; exerted control over everything he did; wanted him to stay at their home and not to meet with his friends; forced him to attend religious services at her non-denominational church, and threatened to end their marriage if he attended a Catholic mass. The petitioner did not provide further probative details regarding P-E-'s behavior and did not describe any specific incident of extreme cruelty in detail.

The letters submitted on the petitioner's behalf do not contain any further probative and detailed information to establish that P-E- battered or threatened the petitioner with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty. In her November 2013 letter, the petitioner's sister generally claimed that P-E- is "unstable, unpredictable, manic and false," and stated that P-E- taunted the petitioner, called him names, refused to assist him with legalizing his immigration status, and "put [him] in the street numerous times." She did not, however, provide any specific examples in support of her claims. Similarly, the petitioner's cousins and friend indicated that P-E- threw the petitioner out of the home on several occasions, and they described P-E- as arrogant, compulsive, confrontational, controlling, and temperamental, without elaborating on any specific examples of the claimed extreme cruelty.

In a letter dated November 18, 2013, Licensed Independent Clinical Social Worker (LICSW), indicated that the petitioner reported that P-E- was "emotionally abusive and volatile." She stated that the petitioner described "fights and verbal altercations over minor situations," and that he indicated the "verbal abuse would occur in public." did not elaborate on any of the claimed verbal or emotional abuse and provided no specific examples of P-E's behavior.

In her psychological evaluation dated December 15, 2013, LICSW, diagnosed the petitioner with symptoms consistent with major depressive disorder and posttraumatic stress disorder. The evaluation also indicated that the petitioner reported living "in constant fear" of P-E-, and that she threatened to "put him out and send him back to Africa." In addition, the evaluation indicated that P-E- "threatened to hit" the petitioner and that on one occasion, P-E- stalked the petitioner him by parking until 4 a.m. outside the house where he was staying. The evaluation did not describe any specific instance where the petitioner was threatened and the petitioner's own statements in his January and July 2014 declarations, did not discuss an occurrence of stalking or threats of physical violence by P-E-.

On appeal, the petitioner states, in *Hernandez v. Ashcroft*, the Ninth Circuit Court of Appeals has emphasized that Congress "clearly intended extreme cruelty to indicate nonphysical aspects of domestic violence," and under the regulations, "any act of physical abuse is deemed to constitute domestic violence without further inquiry, while 'extreme cruelty' describes all other manifestations of domestic violence." 345 F.3d. 824, 840 (9th Cir. 2003). The petitioner claims "the battery and abuse he sustained constituted a pattern of abuse that culminated to extreme cruelty" as he was a victim of P-E-'s bipolar personality, which manifested in irrational and controlling behavior that degraded, humiliated, and isolated him as well as caused him to leave his residence and to seek treatment for his physical health.

In *Hernandez,* the Ninth Circuit Court of Appeals held that extreme cruelty can be assessed under objective standards and is a clinical, nondiscretionary determination subject to judicial review. *Hernandez v. Ashcroft*, 345 F3d. at 833-35. As this case arose outside of the Ninth Circuit, *Hernandez* is not a binding precedent. Moreover, the majority of circuits have held, contrary to *Hernandez*, that extreme cruelty is a discretionary determination not subject to judicial review. *Bedoya-Melendez v. U.S. Att'y Gen.*, 680 F.3d 1321 (11th Cir. 2012); Rosario v. Holder, 627 F.3d 58 (2d Cir. 2010); *Johnson v. U.S. Att'y Gen.*, 602 F.3d 508 (3d Cir. 2010); *Stepanovic v. Filip*, 554 F.3d 673 (7th Cir. 2009); *Wilmore v. Gonzalez*, 455 F.3d 524 (5th Cir. 2006); *Perales-Cumpean v. Gonzalez*, 429 F.3d 977 (10th Cir. 2005).

Even if we were to defer to *Hernandez* as persuasive authority in this case, the facts constituting extreme cruelty in *Hernandez* are not analogous to P-E-'s actions as described in the record. The plaintiff in *Hernandez* was subject to years of her abusive spouse's cycle of violence including brutal beatings and a stabbing in Mexico, leaving the plaintiff bleeding and locked in the home after the attacks without medical care, constant verbal abuse, periods of contrition and emotional manipulation to convince the petitioner to return to him after she had sought refuge with a relative in the United States. *Hernandez v. Ashcroft*, 345 F.3d at 829-32, 840-41. The *Hernandez* court

determined that the plaintiff's husband's non-physical actions "in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that 'may not initially appear violent but that are part of an overall pattern of violence.' 8 C.F.R. § 204.2(c)(1)(vi)." *Id.* at 840. In this case, the record does not demonstrate that P-E-'s verbal insults and demands were similarly part of any overall pattern of violence or otherwise constituted extreme cruelty under the regulation.

After a careful review of all of the relevant evidence, including the additional statements submitted on appeal, the record does not establish by a preponderance of the evidence that P-E- subjected the petitioner to battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi). The record includes claims that the petitioner's wife belittled him, yelled at him, and requested that he leave from and return to the residence on various occasions and that the petitioner received mental health counseling after the breakdown of their marriage. However, the record does not establish that the petitioner's wife ever battered him or that her behavior included other actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in 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

On appeal, the petitioner asserts he entered into marriage with P-E- "with a sincere intent of a lifelong commitment" as demonstrated by the email correspondence between P-E- and his sister. He also asserts although "he was cautioned as to her temperament, [he] fell in love with [P-E-,] who would go to Church, dress well and present nicely to others."

In his declarations below, the petitioner indicated that he met P-E- in November 2011 at a mutual friend's house during a birthday celebration, where they talked, danced, and exchanged phone numbers as they promised to "keep in touch." He generally stated that they went "to many places" and that P-E- was "delightful" and "enjoyable" while they were dating. He stated that he proposed to P-E- in March 2012, but did not provide any further probative details about their courtship and engagement, other than as it relates to the abuse.

The petitioner further indicated that P-E's three children and her daughter's boyfriend attended their wedding at and that a photographer from the local newspaper took photographs. He also stated that they went to a local restaurant to celebrate their wedding, and he gave P-E- a bedroom set and she gave him an inscribed watch as wedding gifts. He indicated that he lived with P-E- and two of her children for about eight months at their address on where P-E- rented a house and maintained all but one utility under her name. He also stated that P-E- requested healthcare benefits on his behalf in November 2012, and they did not have any joint credit card or bank accounts. However, he did not provide any further probative details about his marriage, other than as it relates to the abuse.

The letters and correspondence submitted on the petitioner's behalf do not contain any further probative and detailed information to establish the petitioner's good-faith entry into his marriage. In her November 2013 letter and email correspondence with P-E-, the petitioner's sister generally

discussed the positive feelings that she and the petitioner's family experienced because of the petitioner's marriage and the possibility of the petitioner and P-E- travelling to Cape Verde and Senegal to meet the petitioner's family and to conduct a marriage ceremony. In a letter dated December 10, 2013, the petitioner's cousin indicated that the petitioner and P-E- met at her grandson's birthday party, the petitioner and P-E- came to her home on many occasions, she took their wedding photos to the petitioner's parents when she visited Senegal, and she brought gifts from the petitioner's mother for P-E- and her children. However, the petitioner's sister and cousin did not provide further details about the petitioner's good-faith intent in marrying P-E-, and the petitioner's and P-E-'s relationship, other than as it relates to the abuse.

Based on the foregoing, the record is insufficient to establish the petitioner's good-faith entry into his marriage. Although the petitioner submitted photographs of himself and P-E- on their wedding day and at various functions, he has not provided sufficient probative and detailed information about his marital intentions. His statements and those submitted on his behalf do not provide a probative account of their courtship, shared residence, and shared marital experiences, apart from the abuse. When viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the petitioner entered into marriage with P-E- in good faith as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

Conclusion

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. The appeal will be dismissed.

ORDER: The appeal is dismissed and the petition remains denied.