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U.S. Citizenship  
and Immigration  
Services

Date: JAN 07 2015

Office: VERMONT SERVICE CENTER File: [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:

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 that reads "MRosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (“acting 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 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 acting director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage and that he married her in good faith. 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 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 for an abused spouse self-petition are further explained in 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 or the self-petitioner’s child, 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 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.

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(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.

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(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 Uzbekistan who entered the United States on September 28, 2006, as a nonimmigrant visitor. The petitioner married A-W<sup>1</sup>, a U.S. citizen, on September [REDACTED] in New York City. The petitioner filed the instant Form I-360 self-petition on September 12,

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

2012.<sup>2</sup> The acting director subsequently issued two Requests for Evidence (RFE) of, among other things, A-W-'s battery or extreme cruelty and the petitioner's good-faith entry into the marriage. The petitioner timely responded with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the acting director's grounds for denial and the appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

The petitioner stated in his initial letter that A-W- demanded money and services from him all the time, yelled at him, called him humiliating names, and threatened to have him deported. He also recounted that she disappeared for days and would not explain her absence. He stated that on May [REDACTED] she had her new boyfriend in their apartment and she kicked the petitioner out. In response to the RFE, the petitioner repeated that A-W- yelled at, humiliated, and insulted him, and threatened to have him deported. According to the petitioner, she treated him like her servant.

The petitioner's statements did not make any allegation of physical assault or battery, and did not describe in probative detail any actual or threatened violence, psychological or sexual abuse, or other behavior that constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Although the record includes a Family Offense Petition filed in the Family Court of the State of New York, County of [REDACTED] by the petitioner against A-W- with respect to the incident on May [REDACTED] there is no indication in the record that the court made any findings in the case. Moreover, contrary to the petitioner's assertion on appeal that a protection order was issued, the record contains no evidence that the court issued any order in the case, but rather, only that the petitioner filed the petition.

Similarly, although the record contains two reports by licensed psychiatrist [REDACTED] diagnosing the petitioner with Adjustment Disorder with Anxious and Depressed Mood and depression, the evaluations are inconsistent with the petitioner's statements. For example, according to Mr. [REDACTED] the petitioner experienced "a history of domestic violence, [including being] assaulted by his wife, who continues to threaten him," that she "became increasingly . . . physically . . . abusive," and frequently physically push[ed] him." However, the petitioner never described being pushed or physically assaulted or abused by his wife and did not claim that she continued to threaten him. These discrepancies detract from the probative value of the petitioner's claims.

Letters from the petitioner's friends, I. [REDACTED] and [REDACTED] failed to provide additional information regarding any particular incident or behavior by A-W- that would constitute battery or extreme cruelty. When viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that A-W- subjected him

<sup>2</sup> The petitioner filed a new Form I-360 self-petition on April 7, 2014, receipt number [REDACTED] which remains pending.

to battery or any other behavior that constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established by a preponderance of the relevant evidence 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.

*Entry into the Marriage in Good Faith*

In the petitioner's initial statement, he described being introduced to A-W- through a friend at a night club. He explained that he and A-W- exchanged phone numbers and met at a restaurant a few days later. He briefly recounted walking her dogs and going to clubs and museums together. He stated that they got married in September [REDACTED] in New York, and that they lived at her place until getting a new apartment together in [REDACTED]. He asserted that they talked with his parents in Uzbekistan on [REDACTED] cooked together, visited friends, and had parties in their apartment. In response to the RFE, the petitioner described the feeling of euphoria when he started dating A-W-. He described activities they shared together, stated that he bought her jewelry, and explained that their marriage happened very quickly and naturally.

The petitioner did not describe in probative detail the couple's courtship, wedding ceremony, shared residence, and experiences apart from the claimed abuse. Other letters in the record failed to provide any additional substantive information regarding the couple's relationship or the petitioner's marital intentions. For instance, letters from [REDACTED] briefly recounted attending parties at the couple's apartment, but did not describe any specific contact with the petitioner and A-W-, any particular visit or social occasion with the couple, or any other interactions with the couple that would establish their personal knowledge of the petitioner's marital intentions. Neither the petitioner's statements nor the statements from his friends provide the necessary detail to demonstrate the petitioner's good-faith entry into his marriage. The remaining relevant documents show that the couple was photographed together on a few occasions, filed joint income taxes in 2011, and had a bank account in both of their names, but for which minimal activity is reflected. Considering all of the evidence, the petitioner has failed to establish by a preponderance of the relevant evidence that he entered the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

On appeal, the petitioner failed to establish that he was subjected to battery or extreme cruelty by his wife 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 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). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.