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U.S. Citizenship
and Immigration
Services

Date: **JAN 09 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:

INSTRUCTIONS:

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,

Ron Rosenberg
for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director (“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 for failure to establish that the petitioner entered into the marriage with his spouse, a United States citizen, in good faith, and that she subjected him to battery or extreme cruelty during their marriage.

The petitioner has not submitted a brief or any additional evidence on appeal.

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 a self-petition under section 204(a)(1)(A)(iii) of the Act 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 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 explicated 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 the Dominican Republic who entered the United States on October 2, 2007 as a B-2 nonimmigrant visitor. On June [REDACTED] the petitioner married Y-O-¹, a United States

¹ Name withheld to protect the individual's identity.

citizen, in Massachusetts. The petitioner filed the instant Form I-360 self-petition on June 25, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty and the petitioner's entry into the marriage with his wife in good faith. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

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

Good Faith Entry into the Marriage

The director erred in finding that the petitioner failed to establish that he entered into the marriage with his spouse in good faith. In the petitioner's initial affidavit, he described in probative detail his first meeting with Y-O-, their courtship, brief engagement, wedding ceremony, and shared experiences. He detailed his feelings for Y-O- and described his good-faith intentions to marry her and spend his life with her. The petitioner credibly stated that he first met Y-O- in the summer of 2011 in the store in which he worked. He recounted how Y-O- was a regular customer who spoke perfect Spanish and that they were very friendly toward each other. He stated that he invited her out to see a movie, she accepted, and they began a romantic courtship. The petitioner further described Y-O- as beautiful, smart and ambitious, and explained that he got to know and spend time with Y-O-'s young son. The petitioner provided a credible and detailed account of how he spent every night with Y-O-, fell in love, and decided to propose marriage in accordance with their shared religion. Y-O- accepted and the petitioner explained that they married on June [REDACTED] in a small civil ceremony as they could not afford a more elaborate wedding. He recounted how after they married, he moved in with Y-O- and Johnny and began contributing financially to their household expenses. In response to the RFE, the petitioner submitted a second affidavit, providing further probative details of his good-faith entry into the marriage by providing substantive information about their living arrangements and daily routines.

In addition to the petitioner's two personal affidavits, he submitted an affidavit from [REDACTED], a longtime friend with whom he resided before he married Y-O- and again after they separated. Mr. [REDACTED] stated that he and the petitioner have known each other since 1985 in the Dominican Republic, and when the petitioner came to the United States in October 2007 he stayed with Mr. [REDACTED] family for nearly four years before marrying Y-O- and moving into her home. Mr. [REDACTED] described learning about Y-O- and the petitioner's romantic relationship, and that the petitioner seemed quite serious about her. Mr. [REDACTED] recalled seeing Y-O-'s car in the driveway overnight several times but remarked that more often the petitioner did not come home after meeting her. He stated that whenever he saw the petitioner and Y-O- together he could tell they were a couple, in love, by the way they spoke and acted. The petitioner also submitted three statements from his joint checking account with Y-O-, and five photographs from their wedding ceremony.

A full review of the relevant evidence submitted establishes that the petitioner married his spouse in good faith. The petitioner has submitted his own detailed, credible affidavits of his good-faith entry into marriage, bank statements reflecting a joint checking account, photographs of himself and his wife, and an affidavit of a close friend who demonstrated his personal knowledge of the relationship.

When viewed in the totality, the preponderance of the evidence demonstrates that the petitioner entered into the marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

Although the petitioner has demonstrated his good-faith in marrying Y-O-, he has failed to establish that she subjected him to battery or extreme cruelty. In addition to his and Mr. [REDACTED] affidavits, the petitioner submitted below a behavioral health evaluation.

In the petitioner's first affidavit, he recalled that his problems with Y-O- began when she filed a visa petition on his behalf and their immigration consultant noticed Y-O- had claimed a dependent husband on her 2010 income taxes. The petitioner stated that Y-O- never told him she was married before and when he confronted her, she said that it was merely a tax preparer error that she would have corrected. Y-O- began complaining to the petitioner that their marriage was not worth her going to jail over tax fraud. He recalled that she did not want to correct her past taxes and instead became angry, demanded that he leave, and told him she wanted a divorce. The petitioner stated that Y-O- yelled at him and threatened to call police and immigration authorities if he did not leave. He stated that he moved back to his prior residence in May [REDACTED] and has not seen his wife since. The petitioner added that he went alone to the interview related to the immigrant petition Y-O- had filed on his behalf and is now seeing a psychologist. The petitioner did not, however, cite to specific examples or incidents of abuse or provide probative details about Y-O-'s treatment of him.

In the petitioner's supplemental affidavit, he stated that after separating from his wife he sought psychological therapy, had been four times, and planned to go monthly. He added that he never sought a restraining order against Y-O- because he was afraid of the police, courts and the possibility of being deported. The petitioner's statements did not demonstrate that his wife 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).

In her evaluation, [REDACTED] MD, stated that the petitioner is being followed for depression and anxiety symptoms secondary to the recent separation from his wife. She diagnosed the petitioner with adjustment disorder with mixed anxiety and depression and noted that while he does not fulfill criteria for "MDD or Depressive D/O," he was prescribed Trazodone to help him sleep. While we do not question Dr. [REDACTED] professional opinion, her assessment conveyed the petitioner's statements during his sessions with her and provided no further, probative information regarding the claimed abuse.

In his affidavit, Mr. [REDACTED] stated that he first learned of marital problems when the petitioner called and told him that Y-O- had listed another man as her husband on her 2010 income tax returns. Mr. [REDACTED] recalled that the petitioner and Y-O- argued, she kicked him out of the house, and he moved back in with Mr. [REDACTED] and his family around May [REDACTED]. Mr. [REDACTED] stated that the petitioner later told him everything was fine in their marriage until the tax return discovery and that Y-O- feared that if she amended her returns she would be arrested and jailed for fraud. He recalled that the petitioner spoke often of his wife after their separation, was obviously devastated and Mr. [REDACTED] worried about him. Mr.

█ did not indicate that the petitioner was battered, threatened with violence, psychological or sexual abuse, or subjected to other conduct constituting extreme cruelty as defined in the regulation.

The petitioner briefly asserts on appeal that he was “subjected to extreme mental cruelty” by his spouse. However, we find no error in the director’s determination that the record did not establish the requisite battery or extreme cruelty below, and the petitioner has not submitted any additional evidence on appeal. Here, the petitioner’s affidavits and the affidavit from his friend, Mr. █, did not provide probative details regarding specific incidents of abuse. Likewise, Dr. █ assessment did not provide any substantive information regarding the claimed abuse. Accordingly, the petitioner has not shown that his spouse subjected him 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.

Conclusion

On appeal, the petitioner has established that he entered into the marriage with his spouse in good faith. The findings by the director to the contrary are withdrawn. The petitioner has not, however, demonstrated that he was subjected to battery or extreme cruelty by his wife during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on this ground.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.