

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **JAN 15 2015**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:
[REDACTED]

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, (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 pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by his lawful permanent resident spouse.

The director denied the petition based on the petitioner's failure to establish that he was battered or subjected to extreme cruelty by his lawful permanent resident spouse, that he entered into marriage with her in good faith, and that he resided with her during the marriage.

On appeal, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under . . . clause (ii) or (iii) of subparagraph (B), 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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)(B)(ii) 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. . . .

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 the Dominican Republic, entered the United States on February 13, 2004 as a nonimmigrant visitor. The petitioner represents that on May 24, 2011, he was en route from New York to Florida to marry G-G-¹, a citizen of Cuba and lawful permanent resident of the United States, when he was apprehended by Customs and Border Patrol officials while disembarking a bus in Florida. The petitioner was issued a Notice to Appear, and detained by U.S. Immigration and Customs Enforcement (ICE). While in ICE detention, the petitioner married G-G- on July 1, 2011, and was subsequently released on bond to reside with G-G- in Florida. The petitioner filed a Form I-485 to adjust his status to that of lawful permanent resident pursuant to the Cuban Adjustment Act, and the immigration court terminated the petitioner's immigration proceedings on October 5, 2011. The Form I-485 was denied on February 22, 2013 after the petitioner failed to appear for his scheduled interview. The petitioner filed the instant Form I-360 self-petition on September 10, 2013. The director subsequently issued a Request for Evidence (RFE) of battery and/or extreme cruelty, joint residence with G-G-, and the petitioner's good-faith entry into marriage. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility, and denied the petition. The petitioner subsequently appealed the director's decision, submitting a personal affidavit and additional evidence.

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

Joint Residence

The preponderance of the relevant evidence establishes that the petitioner resided with G-G- during the marriage. In his Form I-360 self-petition, the petitioner indicated that he resided with G-G- from July until November at a residence on Florida. In an undated affidavit provided with his initial Form I-360 submission, the petitioner asserted that he began living with G-G- and her two children upon his release from detention. The petitioner's administrative record confirms that prior to his release he documented that he would reside at the address. The petitioner submitted a photocopy of a postmarked envelope addressed to G-G- at the address, dated May 31, 2011, which the petitioner mailed from ICE detention. In response to the RFE, the petitioner provided a U.S. Postal Service change of address confirmation letter, showing that he changed his mailing address as of June address. The petitioner provided bank statements from two banks addressed to him at the home. The petitioner also provided a photocopy of the money transfer sent by G-G- to pay the petitioner's immigration bond. The document is signed by G-G- and lists her address on

¹ Name withheld to protect the individual's identity.

In her decision, the director found that evidence in the record was inconsistent with the petitioner's statement that he resided with G-G- at the [REDACTED] address until November [REDACTED]. The director noted an employer letter from New York stating that the petitioner had been employed in New York beginning in September [REDACTED] and an envelope from a life insurance company, dated September [REDACTED] showing a change of address for the petitioner to a residence on [REDACTED] Florida. The director found that the record contained insufficient evidence to establish that the petitioner resided with G-G- and denied the petition.

On appeal, the petitioner, in an undated affidavit, asserts that he inadvertently failed to mention that the couple moved to [REDACTED] in August [REDACTED], and that G-G- continued to live at that address after the petitioner returned to New York in November [REDACTED]. The petitioner stated that G-G- did not include him on the lease. The petitioner submitted a letter from the Social Security Administration, dated October [REDACTED] addressed to him on [REDACTED]. In response to the RFE, the petitioner provided a copy of correspondence sent by his accountant to G-G- at the [REDACTED] address via certified mail, dated December [REDACTED], including a signed return receipt.

The petitioner also asserts on appeal that the employment letter indicating that he worked in New York since September [REDACTED] was an error. In support of his assertion, the petitioner provided an additional letter with the corrected dates, and pay stubs showing that he was employed at the New York restaurant beginning in December [REDACTED]. The petitioner also provided a copy of his bus itinerary to document the date of his departure from Florida in November [REDACTED].

The preponderance of the relevant evidence establishes that the petitioner resided with G-G- during their marriage. The petitioner has submitted credible documentation associating both him and G-G- with the [REDACTED] address and the [REDACTED] address. The preponderance of the evidence establishes that the petitioner resided with G-G- during their marriage as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act. The director's finding to the contrary is hereby withdrawn.

Good Faith Entry Into the Marriage

The preponderance of the relevant evidence establishes that the petitioner entered into marriage with G-G- in good faith. In his initial Form I-360 submission, the petitioner provided an undated affidavit in which he described meeting G-G- at his friend's birthday party in [REDACTED] in April 2010. The petitioner discussed his long-distance relationship with G-G-, conducted over the telephone and internet, until he proposed marriage in February 2011. The petitioner indicated that he was on his way to [REDACTED] to marry G-G- when he was arrested and detained for his lack of immigration status. The petitioner's administrative record reflects that at the time of his arrest, he informed immigration officials that he was traveling to Florida to marry G-G-. The petitioner submitted two detailed letters that he wrote to G-G- while in immigration detention that demonstrate his emotional investment in the relationship. The petitioner also submitted letters from G-G-'s mother and the father of G-G-'s children, both predating the wedding, indicating their approval and support of the marriage. In addition, the petitioner provided medical records showing that he sought mental health

services for depression when G-G- indicated that she wanted a divorce. The petitioner also submitted photographs of the couple's wedding reception, and the couple on two other occasions. In response to the RFE, the petitioner submitted evidence that he established child life insurance policies for G-G-'s two children. The director found the evidence insufficiently detailed to establish that the petitioner married G-G- in good faith, and denied the self-petition. The director discounted relevant evidence, such as the life insurance policies, finding that the record failed to establish that the policies were for G-G-'s children.

On appeal, the petitioner submits an undated personal affidavit in which he further discusses the couple's long distance courtship, and their wedding ceremony at the ICE detention facility. He also describes caring for G-G-'s children while she worked. He also submitted further documentation of the life insurance policies.

On appeal, the petitioner has demonstrated by a preponderance of the relevant evidence that he entered into his marriage with G-G- in good faith. Section 204(a)(1)(A)(iii) of the Act does not require traditional forms of joint documentation 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). In lieu of traditional joint documentation, 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." 8 C.F.R. § 204.2(c)(2)(vii). USCIS has sole discretion to determine credibility of evidence and weight accorded. Section 204(a)(1)(J) of the Act. Here, the petitioner has described his courtship, wedding ceremony, and shared experiences with G-G- and her children. The affidavits are supported by documents demonstrating the petitioner's emotional bonds to his wife, including the detailed letters sent by the petitioner to G-G- while in detention prior to marriage, and medical records documenting his emotion distress when the marriage ended. When viewed in the aggregate, the preponderance of the relevant evidence establishes that the petitioner married G-G- in good faith, as required by 204(a)(1)(B)(ii)(I)(aa) of the Act. The director's finding to the contrary is hereby withdrawn. Although the petitioner has established that he married G-G- in good faith and that he resided with her during the marriage, the petition cannot be approved because the evidence does not demonstrate that G-G- battered the petitioner or subjected him to extreme cruelty, as explained below.

Battery and Extreme Cruelty

The preponderance of the relevant evidence, as supplemented on appeal, does not establish that the petitioner's wife battered him or subjected him to extreme cruelty. With his initial Form I-360 submission, the petitioner provided an undated personal affidavit. In the affidavit, the petitioner indicated that he and G-G- experienced financial difficulties from the beginning of their marriage due to the petitioner's inability to maintain stable employment. The petitioner described G-G- as being "disappointed and frustrated" when the petitioner was not able to provide for her. He indicated that she told the petitioner that she was tired of him, and could not stand him. The petitioner recounted that one evening in October or November [REDACTED], he returned home at 11:00 p.m. to find that G-G- had thrown his clothing outside, and refused to let him in the house. The petitioner also stated that while he was in detention, he gave G-G- access to his bank accounts so that she could arrange for his bail and

immigration related expenses, and send money to his children in the Dominican Republic. The petitioner indicated that G-G- only sent one small payment to the Dominican Republic, and claimed to have spent the rest of the money from the accounts on the petitioner's immigration expenses. The petitioner stated that G-G- became angry when he requested the receipts, and indicated that the petitioner would have to choose between her and his children in the Dominican Republic. The petitioner recounted that G-G- yelled at him often and one occasion insisted that the petitioner sit on the back porch while she had a private conversation with her friends. The petitioner stated that he moved back to New York to find employment with the intention that G-G- would join him once he was reestablished; however, G-G- ultimately decided to end the marriage several months after the petitioner returned to New York. The petitioner indicated that his attempts to reconcile with G-G- were unsuccessful.

The petitioner submitted medical records from the [REDACTED] showing that the petitioner was seen several times on an out-patient basis beginning in July 2012. The notes relate that the petitioner was distressed because his wife was mentioning the possibility of divorce and the petitioner did not want to lose her. The records state that the petitioner did not report any history of physical or sexual abuse. The petitioner provided an affidavit from his brother dated March 25, 2013, stating that the petitioner was suffering emotionally because his wife left him for another man. The petitioner also submitted an affidavit from his co-worker, [REDACTED] who described the petitioner's deteriorating health as a result of G-G-'s abandonment of the marriage. In addition, the petitioner submitted correspondence with his bank detailing three unauthorized debits totaling approximately \$97.00, which the petitioner indicated were made by G-G- without his permission. The petitioner also submitted an affidavit from his friend [REDACTED] stating that G-G- became "aggressive" because her finances were affected by the petitioner's detention. Mr. [REDACTED] stated that G-G- disrespected, threatened, and insulted the petitioner, but did not provide probative information regarding any specific incidents. The petitioner also submitted a letter from friend [REDACTED] in which she recounted that G-G- told the petitioner that she would not take him back if he could not find a way to earn a living.

In response to the RFE, the petitioner submitted an undated personal affidavit in which the petitioner elaborated on his and G-G-'s conflict around the financial aspects of their relationship. The petitioner indicated that G-G- did not approve of the petitioner sending money to his children in the Dominican Republic, that she criticized him constantly for inability to maintain stable employment, and that she screamed at him. The petitioner stated that G-G- declined his suggestion to seek relationship counseling. The petitioner indicated that G-G- had mixed emotions about the petitioner's move to New York: she wanted him to get a job, but she did not want him to leave. The petitioner recounted that in July or August [REDACTED] she told the petitioner that she wanted to end the relationship, and that he had not spoken to her since August [REDACTED]. The petitioner provided a letter from the [REDACTED] Department of Psychiatry, indicating that the petitioner has been prescribed anti-depressant medication. The petitioner also provided a letter from social worker [REDACTED] of the [REDACTED] dated January 21, 2014, indicating that the petitioner was in individual therapy since May 6, 2013. In her letter, Ms. [REDACTED] stated that the petitioner's relationship with his wife involved abandonment, constant criticism, and verbal and physical abuse, but did not describe specific incidents. The medical records submitted with the letter indicate that the petitioner

claimed not to have been in any past situation of domestic violence. The records further indicated that the petitioner sought documentation of his treatment for purposes of his immigration paperwork.

In her decision, the director correctly determined that the relevant evidence submitted below did not establish that G-G- battered the petitioner or subjected him to extreme cruelty. On appeal, in an undated personal affidavit, the petitioner claims for the first time in these proceedings that he was battered and sexually abused. The petitioner asserts that G-G- threw a pot at him, and attempted to hit him with a wooden spoon. He further asserted that G-G- forced him to engage in anal sex with her, and tied him up and forced herself on him on one occasion. The petitioner submitted an unsigned letter dated June 9, 2014, from [REDACTED] Registered Mental Health Counselor Intern, located in [REDACTED] Florida. Ms. [REDACTED] claims to provide psychotherapeutic treatment to the petitioner, but does not describe how many times she has seen the petitioner, who resides in New York. In her letter, Ms. [REDACTED] reviews the petitioner's medical history, as described in medical records previously submitted to USCIS, and suggests that the treatment the petitioner is receiving from his licensed clinical social worker, whose detailed notes are contained in the record, is "limited" compared to the diagnosis and treatment that Ms. [REDACTED] is able to offer as a mental health counselor. Ms. [REDACTED] diagnoses the petitioner with "shell-shock" and major depressive disorder. Ms. [REDACTED] relates that the petitioner told her that G-G- threw a pressure cooker at him, leaving a permanent bruise. Ms. [REDACTED] also states that G-G- went to the petitioner's place of employment and had his paychecks given to G-G- directly instead of to the petitioner. This claim is inconsistent with the petitioner's representations that he did not find regular employment while in Florida, and that his lack of employment was a source conflict in his marriage. Ms. [REDACTED] also indicates that G-G- forced the petitioner to engage in anal sex against his wishes.

The petitioner's claims of abuse on appeal are not credible. The petitioner has documented numerous sessions of outpatient therapy at a local clinic in New York, which he submitted with his initial Form I-360 self-petition and in response to the RFE. The notes from those visits, considered by the director, are consistent with the petitioner's claims about his relationship in his affidavits submitted below. Before his appeal, the petitioner consistently represented to USCIS, and to the medical professionals that he saw, that he and G-G- had financial difficulties that were a source of conflict in the relationship, that G-G- was critical of the petitioner, that she threw his clothes out of the house on one occasion, and that she ultimately left him for another man. Although the letter from [REDACTED], submitted in response to the RFE, mentions physical abuse, the medical records from his clinical sessions consistently deny any history of physical abuse or domestic violence. Neither the petitioner nor Ms. [REDACTED] have specified how many sessions he has had with Ms. [REDACTED] or where they took place. It is not apparent from the record that the petitioner ever returned to Florida after moving back to New York at the end of 2011. In her letter, Ms. [REDACTED] provides few specifics of the petitioner's relationship, beyond generalized descriptions of G-G-'s purported abuse. Notably, Ms. [REDACTED] assertion that G-G- went to the petitioner's place of employment and convinced his boss to give her the petitioner's paychecks appears to directly contradict that petitioner's claims that he was not able to find employment. The petitioner has never made this claim in any of his prior statements. In addition, Ms. [REDACTED] letter is not signed. The irregularities in Ms. [REDACTED] letter, and her assertions that are inconsistent with the petitioner's medical records, severely diminish the probative value of the document. *See* 8 C.F.R. § 204.2(c)(2) (indicating that the determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of USCIS). In addition, the

petitioner's claims on appeal are inconsistent with his repeated representations to mental health professionals, as documented in his medical records, that he had not experienced physical or sexual abuse. The petitioner briefly stated in his undated affidavit, submitted on appeal, that G-G- threw a pot at him. He also stated that she forced him to engage in sexual acts against his will. The petitioner did not indicate why he never mentioned these incidents to any of the mental health professionals that he had seen in the past. He did not indicate that date on which they occurred or provide sufficient detail to establish by a preponderance of the relevant evidence that G-G- abused him.

The petitioner must demonstrate that his spouse battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The preponderance of the relevant evidence, reviewed above, does not so demonstrate. The preponderance of the evidence indicates that G-G- and the petitioner had marital difficulties related to their financial situation, and that G-G- criticized and yelled at the petitioner when he was not able to find and maintain employment. The petitioner indicated that G-G- threw his clothes out of the house and on one occasion asked him to stay on the porch while she had a private conversation with her friends. The record shows that G-G- abandoned the marriage for another man, and the petitioner sought mental health services to treat his depression stemming from the end of the relationship. The petitioner's claims of abuse on appeal are inconsistent with the other evidence of record. When viewed in the aggregate, the preponderance of the relevant evidence, as supplemented on appeal, does not establish that the petitioner's spouse subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Conclusion

The petitioner has not overcome all of the director's ground for denial on appeal. Although the petitioner has established that he resided with G-G- and that he married her in good faith, the record does not demonstrate by a preponderance of the evidence that the petitioner was battered or subjected to extreme cruelty by his lawful permanent resident spouse. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.