



U.S. Citizenship
and Immigration
Services

(b)(6)

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)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

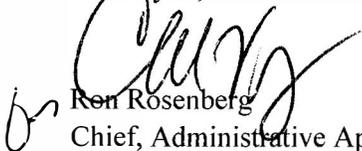
ON BEHALF OF PETITIONER:

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,


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)(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 United States citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with a United States citizen in good faith and that she subjected him to battery or extreme cruelty during their marriage.

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 are further explained 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 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 Guyana who last entered the United States on February 28, 2002, as a nonimmigrant visitor. In a statement submitted in support of the instant petition¹ the petitioner

¹ The statement is undated and unsigned. On appeal, the petitioner indicates that this statement was

indicates that he married his first wife, A-E-² in [REDACTED] and resided with her for six months. The record reflects that he was divorced from A-E- on June [REDACTED] and married E-W-³, a U.S. citizen, in [REDACTED] Maryland on August [REDACTED]. The petitioner filed the instant Form I-360 self-petition on May 31, 2013. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty by E-W- against him and his good-faith entry into their marriage. The petitioner timely responded to each notice with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on both grounds and the petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility. The appeal will be dismissed for the reasons stated below.

Battery or Extreme Cruelty

We find no error in the director's determination that E-W- did not subject him to battery or extreme cruelty. The relevant evidence in the record includes the petitioner's declarations; an affidavit, dated March 1, 2013 from a friend, [REDACTED] and an affidavit from the petitioner's brother, [REDACTED], dated March 7, 2014.

The petitioner stated that the abuse was mostly not physical, except that E-W- slapped him on one occasion following the interview on the Form I-130 petition before United States Citizenship and Immigration Services (USCIS). He stated that the verbal and mental abuse increased following that interview, and when he asked E-W- to spend money on the rent instead of cigarettes and alcohol, she got furious and threatened to have him arrested or turned over to immigration. The petitioner stated that E-W- threw dishes, cursed at him, asked him to leave, threw his clothes out of the dresser, drank too much and humiliated him in front of their roommate, T-⁴ with whom she drank and smoked marijuana and had an affair with. The director correctly reviewed this testimony and determined that it did not provide sufficient probative information regarding any specific incidents of abuse to establish that E-W- subjected the petitioner to battery or extreme cruelty.

[REDACTED] testified that he was a "witness to their competitiveness, their affection towards each other as well as the misunderstandings and lovers quarrels." The petitioner's brother, [REDACTED] stated that about a year after the petitioner married E-W-, the petitioner asked if he could stay with Mr. [REDACTED] due to marriage troubles, and that the petitioner seemed withdrawn. Mr. [REDACTED] stated that a month after the petitioner moved back in with his wife, the petitioner had to leave E-W- again, and that on the phone Mr. [REDACTED] could hear E-W- "shouting and things being broken in the background." Mr. [REDACTED] further described hearing E-W- call the petitioner names and threaten to have him deported. Neither Mr. [REDACTED] nor Mr. [REDACTED] discussed any battery or described any behavior that would constitute extreme cruelty as that term is defined under the regulation at 8 C.F.R. 204.2(c)(1)(vi).

submitted on August 16, 2013 (first declaration).

² Name withheld to protect the individual's identity.

³ Name withheld to protect the individual's identity.

⁴ Last name unknown; first name withheld to protect the individual's identity.

On appeal, the petitioner asserts that the director failed to give weight to the evidence and failed to recognize the pattern of extreme mental cruelty and emotional abuse suffered by the petitioner. The petitioner maintains that the evidence shows that E-W- repeatedly: cursed at the petitioner; called him demeaning names in front of others; took his clothes out of the drawers and sometimes ruined them; failed to pay the rent with money he gave her; threatened him with deportation; slapped him; and threw a glass bottle at him. The petitioner does not, however, provide substantive information about any specific incidents of abuse to demonstrate that E-W- 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). When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner's former 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

The director also correctly determined that the petitioner failed to establish that he married E-W- in good faith. The Form I-360 self-petition indicates that the petitioner last resided with E-W- in April of [REDACTED] in Maryland.⁵ The record contains the petitioner's declarations, affidavits from [REDACTED], photographs, and documentary evidence in both names. The [REDACTED] vehicle registration dated June [REDACTED] bank account statements, [REDACTED] letters, letter from [REDACTED] insurance policy, [REDACTED] telephone bills and the eviction notice were all dated after the petitioner and E-W- separated. The 2011 and 2012 Internal Revenue Service (IRS) individual tax returns filed by the petitioner were completed as head of household and did not name E-W- as his spouse. The IRS 2010 IRS tax return, completed as married filing jointly, was unsigned and undated. The [REDACTED] amended IRS tax return to include both spouses filing jointly was dated approximately a year after the petitioner and E-W- separated. The remaining evidence, without further, probative testimony, is insufficient to establish that the petitioner married E-W- in good faith.

Despite these deficiencies, traditional forms of joint documentation are not required 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). Rather, 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." *See* 8 C.F.R. § 204.2(c)(2)(vii). There is no documentary evidence of the petitioner's first year with E-W-, when they were first married. The petitioner's statements indicated that he met E-W- in [REDACTED] and dated her for about six months, when her uncle suggested that they marry. He stated that he had to first divorce A-E-, which took approximately four months. He described how his relationship with E-W-'s daughter was rocky. He stated that he and E-W- married at the courthouse and celebrated by going to [REDACTED] for the weekend. He then indicated that E-W- sponsored him for an immigrant visa, and recounted a difficult experience at the immigration interview, where his wife learned about his child by another woman. The petitioner then stated that in [REDACTED], he obtained employment in New York but that E-W- remained in [REDACTED]

⁵ The petitioner stated in his declaration that he moved into an apartment with E-W- by August of [REDACTED] and that she later kicked him out of the house. This discrepancy was not clarified on appeal.

and he would come home on the weekends. The petitioner did not describe in sufficient detail his feelings toward E-W-, their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse, and did establish his good faith intentions at the time of his marriage.

Mr. [REDACTED] the petitioner's brother, mentioned that the petitioner had a quiet wedding, but he did not attend the wedding. He did not state that he observed the petitioner and E-W- as a married couple or that he had any personal knowledge of the petitioner's marital intentions. Mr. [REDACTED] stated that he and his wife visited with the couple, but did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing his personal knowledge of the relationship.

On appeal, the petitioner states that while the petitioner officially left the marital home in April of [REDACTED] the petitioner and E-W- continued an on-and-off relationship, and that the fact that the petitioner is listed jointly with E-W- on documents in [REDACTED] does not mean that the marriage was not entered into in good faith. However, the petitioner does not provide substantive information regarding his marital intentions sufficient to overcome the deficiencies of the record. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that E-W- subjected him to battery or extreme cruelty 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 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.