

(b)(6)

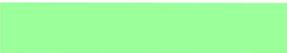


**U.S. Citizenship
and Immigration
Services**



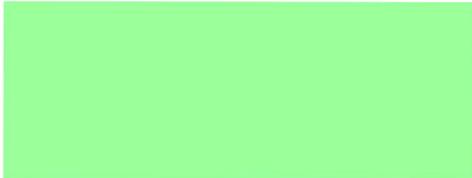
Date: **JAN 22 2015**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

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:

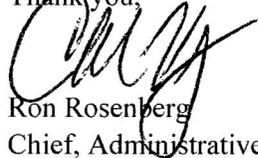


INSTRUCTIONS:

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

007

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 U.S. citizen spouse. The director denied the petition for failure to establish that the petitioner was the subject of battery or extreme cruelty by his former wife, and that he married her in good faith. On appeal, the petitioner, through counsel, submits a brief and copies of previously submitted documents.

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). An alien who has divorced an abusive U.S. citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Russia, entered the United States on May 24, 2007 as a nonimmigrant visitor. He married H-S-¹, a U.S. citizen, on October [REDACTED] in [REDACTED] Kentucky. The petitioner divorced H-S- on July [REDACTED] and filed the instant Form I-360 self-petition on July 5, 2011. The director subsequently issued a request for additional evidence (RFE) of battery and/or extreme cruelty, and the petitioner's good-faith entry into the marriage, among other issues. The petitioner responded with further evidence, which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner timely appealed.

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

Battery or Extreme Cruelty

The preponderance of the relevant evidence does not establish that H-S- battered the petitioner or subjected him to extreme cruelty. In his personal affidavit, dated June 27, 2011, the petitioner recounted that he was disappointed that H-S- did not want to cook for him when she moved from Ohio to live with him in New York. The petitioner stated that H-S- frequently travelled to Ohio to see her daughter and then not return when she said she would which made him feel sad and lonely. In March of [REDACTED] the petitioner stated that H-S- yelled at him using profanity when he failed to purchase her favorite beverage and cigarettes while grocery shopping. He further stated that she threw things at him, pushed him, and once locked him in the bathroom. The petitioner also recounted that H-S- demanded that the petitioner give her \$1000 or she would report him to immigration authorities. The petitioner stated that after an argument, H-S- apologized, and he borrowed \$1000 and gave it to her. He stated that he suspected H-S- was doing drugs and that she continued to demand money, threaten to have him deported, and leave him for days. The petitioner did not further provide probative details about these incidents or any other specific incidents of battery or extreme cruelty.

The petitioner also stated in his affidavit that H-S- was arrested on drug related charges and provided a printout of a news story dated April [REDACTED], that states that H-S- was arrested for manufacturing methamphetamine. The petitioner submitted a letter from [REDACTED] Senior Case Manager at [REDACTED] dated March 28, 2011, stating that the petitioner sought counseling on January 4, 2011, and attended nine individual counseling sessions for domestic violence. The letter stated that the petitioner reported that H-S- physically abused him, but did not provide probative information regarding specific instances of physical abuse. The letter recounted information from the petitioner similar to that which he provided in his personal affidavit. Ms. [REDACTED] indicated that she provided the petitioner with referrals for psychotherapy services.

In response to the RFE, the petitioner provided a letter from [REDACTED] Case Manager with [REDACTED] dated July 9, 2013. In her letter, Ms. [REDACTED] stated that Ms. [REDACTED] provided the petitioner with eight sessions of psycho-educational counseling related to H-S-'s emotional, verbal, and physical abuse.

¹ Name withheld to protect the individual's identity.

Ms. [REDACTED] described similar incidents to those related by the petitioner in his personal affidavit, stating that H-S- did not do very much cooking or housework, that she would yell at the petitioner using profanity and threaten to call immigration on him, that she took frequent trips to Ohio, demanded money from the petitioner, and that she used drugs. Ms. [REDACTED] indicated that H-S- abandoned the relationship in August [REDACTED]. However, H-S-'s behaviors, as described by Ms. [REDACTED] do not constitute battery or extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Also in response to the RFE, the petitioner provided an affidavit from his friend [REDACTED] dated July 15, 2013. In his affidavit, Mr. [REDACTED] claimed to have resided with the petitioner and H-S- starting at the beginning of 2008, although the petitioner did not mention a roommate in his affidavit. Contrary to Mr. [REDACTED] assertion that the petitioner asked him to move in with them due to financial difficulties, the petitioner stated in his personal affidavit that he selected the residence because he "knew [he] could pay for it by [him]self." Despite claiming to reside with H-S- and the petitioner, and the petitioner's assertions that he had numerous confrontations with H-S- over the course of their marriage, Mr. [REDACTED] only recounted one incident when he observed H-S- yell at the petitioner. Mr. [REDACTED] stated that the three were having dinner when he and the petitioner exchanged a few words in Russian, and H-S- became angry, yelled at the petitioner using profanity, and threatened to call immigration. Mr. [REDACTED] did not indicate that H-S- either battered the petitioner or subjected him to extreme cruelty. In addition, the petitioner submitted photographs of portions of text messages sent to him by H-S-, dated February and August [REDACTED] in which H-S- used profanity, requested that the petitioner answer her, stated that she does not care if the petitioner goes back to his country, and threatened to show the petitioner how bad his life can be. The texts indicate that the couple argued, but do not show that H-S- either battered the petitioner or subjected him to extreme cruelty. In response to the RFE, the petitioner submitted an additional copy of his July 27, 2011, personal affidavit, but did not provide any other personal statements regarding the claimed abuse.

In her decision, the director correctly found that the relevant evidence did not establish that H-S- battered the petitioner or subjected him to extreme cruelty. The petitioner, through counsel, subsequently filed a motion to reopen, submitting an additional letter from [REDACTED] Clinical Director of [REDACTED] dated October 30, 2013. In her letter, Ms. [REDACTED] indicated that the petitioner had ten individual counseling sessions with [REDACTED], during which the petitioner reported that H-S- demanded money from him and told him that if he did not give her money she would hire someone to kill him. He also reported that she had angry outbursts during which she would through things at the petitioner and once slapped him, and that she would insult his ethnicity. The director granted the motion to reopen, but affirmed her previous decision noting inconsistencies between the petitioner's affidavit and the various letters from [REDACTED] personnel.

On appeal, counsel attempts to provide an explanation for the discrepancies in the evidence, but does not submit an additional affidavit from the petitioner. The petitioner provides a letter from [REDACTED] psychotherapist [REDACTED] dated May 13, 2013. The letter states that the petitioner was seen at the counseling center between June of [REDACTED] and November of [REDACTED] for symptoms related to H-S-'s domestic violence, but does not provide any description of the abuse that the petitioner claimed to have experienced. The petitioner also resubmits previously submitted documents, discussed above.

De novo review of the record, as supplemented on appeal, does not demonstrate by a preponderance of the relevant evidence that the petitioner was battered or subjected to extreme cruelty by H-S-. 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 petitioner has provided one personal affidavit in this matter in which he indicated that his wife declined to cook for him, became angry with him when he did not give her money, and during arguments yelled at him using profanity, threatened to call immigration, threw things, and on one occasion pushed him. However, the petitioner did not provide probative details regarding these incidents such to establish a pattern of violence that would constitute battery or extreme cruelty as anticipated by the statute and defined in the relevant regulation. We note, as did the director, that the petitioner has submitted a bank statement for the period of September 10, [REDACTED] through October 8, [REDACTED] showing that he and H-S- had a joint bank account with a substantial amount of money to which H-S- apparently had access. The petitioner's claims regarding H-S-'s requests for money, and her threats if he did not provide the money, are inconsistent with the petitioner's and H-S-'s financial arrangements as documented in the relevant evidence. We acknowledge that the petitioner sought counseling at [REDACTED] and we do not question the professional judgment of the mental health counselors that evaluated him. However, the various descriptions of H-S-'s behavior, as recounted in the letters from [REDACTED] and the petitioner's and Mr. [REDACTED] affidavits, are not sufficiently detailed or consistent, to demonstrate that H-S- battered the petitioner or subjected him to extreme cruelty. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner's former spouse battered him or subjected him to extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner did not establish that he married H-S- in good faith and the petitioner has not overcome the director's findings on appeal. In his personal affidavit, dated June 27, 2011, the petitioner described meeting H-S- at an ice cream stand while he was visiting a friend in [REDACTED] Ohio. The petitioner stated that the two immediately hit it off and dated for approximately one week in [REDACTED] but did not provide probative information regarding their courtship. The petitioner indicated that the couple talked on the phone every day when he returned to New York. The petitioner stated that he proposed to H-S- and returned to Ohio at the end of September of [REDACTED] and married H-S- on October [REDACTED] but did not provide any description of the proposal or wedding ceremony. The petitioner recounted that H-S- moved in with him in New York, but provided minimal description of their life together, generally noting that he was happy, that they bought a few kitchen items, and that prior to Christmas, they set up a Christmas tree. The petitioner did not further provide a probative description of his joint experiences or residence with H-S-.

With his initial Form I-360 submission, the petitioner submitted a federal income tax return for 2007 listing him and H-S- at the [REDACTED] New York address, with a filing status of "Married filing jointly." The documentation shows that the petitioner initially filed as "Married filing separately," but subsequently submitted an amended return with the joint status. The petitioner also submitted a jointly filed federal income tax return for 2008, in which the petitioner claimed that H-S-'s daughter resided with the couple for 12 months, in contrast to the petitioner's representations in his personal affidavit that H-S-'s daughter never resided with them, thus diminishing its evidentiary weight. He also submitted a

joint checking account statement for the period of September 10, [REDACTED] through October 8, [REDACTED] after the petitioner and H-S- were already separated. The petitioner also submitted correspondence from the New York Department of Motor Vehicles showing that H-S- obtained a New York identification card with the [REDACTED] address, and three unlabeled photos of what appear to be the petitioner's and H-S-'s wedding ceremony.

In response to the RFE, the petitioner submitted correspondence from the Internal Revenue Service (IRS) and New York State Department of Taxation and Finance, dated July of [REDACTED] after the petitioner represented that H-S- abandoned the relationship. The documents relate to their 2008 taxes, which appear to have been jointly filed. The petitioner also submitted a cellular account activation document listing both the petitioner's and H-S-'s names, one mobile phone number, with a notation that says "family plan." The petitioner also provided photocopies of H-S-'s debit and credit cards. In addition, the petitioner submitted bank account statements in his name only, covering the period of December 8, 2007, until May 8, 2008. The petitioner was the sole owner of the couple's bank account until May of 2008, when H-S- was added to the account. Of numerous transactions documented on these statements, the petitioner identified two transactions from this period which he claimed were made in support of the marriage. It is not apparent from the bank statements that purchases at [REDACTED] and other such businesses were made for H-S-'s benefit, or by H-S- herself.

In response to the RFE, the petitioner also submitted an affidavit from his friend, [REDACTED] who stated that he has known the petitioner since May of 2007. Mr. [REDACTED] recounted that the petitioner told him around Christmas 2007 that he married H-S- sometime around the end of [REDACTED] and that she moved in with the petitioner in either November or December of that year. Mr. [REDACTED] did not appear to have been aware of H-S- prior to learning from the petitioner of his marriage, and did not attest to any personal knowledge of the petitioner's courtship or wedding ceremony. Mr. [REDACTED] stated that he moved in with the petitioner and H-S- at the beginning of 2008 at the petitioner's request because "money was very tight." However, as noted above, the petitioner claimed to have selected the apartment because he knew that he could pay for it by himself. The petitioner did not mention that he and H-S- resided with a roommate. These inconsistencies diminish the probative value of Mr. [REDACTED] affidavit. Mr. [REDACTED] indicated that the petitioner and H-S- frequently discussed their desire to move into a better apartment, but he did not share substantive information about the petitioner's marital intent or otherwise establish his personal knowledge of the couple's relationship.

In her decision, the director correctly concluded that the preponderance of the relevant evidence did not establish that the petitioner entered into marriage with H-S- in good faith. On appeal, the petitioner asserts that the evidence submitted is sufficient to show that he shared financial responsibilities with H-S-. However, the petitioner claimed that that H-S-'s daughter resided with the couple for 12 months in his 2008 joint tax returns, which is inconsistent with the petitioner's claim that she never lived with them. The bank statements do not demonstrate shared financial responsibilities, and thus do not help the petitioner establish that he entered into his marriage in good faith. Despite these deficiencies of the record, the petitioner is not required to submit traditional forms of joint documentation under section 204(a)(1)(A)(iii) of the Act; however, a self-petitioner must nonetheless satisfy his burden of proof. In lieu of traditional 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). Here, neither the petitioner's affidavit, nor Mr. [REDACTED] affidavit, provided sufficient probative testimony regarding the petitioner's courtship, wedding ceremony, shared residence and experiences beyond the claimed abuse. Without probative testimony, the unlabeled photographs do not provide insight into the petitioner's intent in marriage. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with H-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As the petitioner has failed to establish the requisite battery or extreme cruelty, he also has not demonstrated any connection between his divorce and such battery or extreme cruelty. Consequently, beyond the director's decision, the petitioner has not established that he had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(CC)(ccc) of the Act.²

Conclusion

On appeal, the petitioner has failed to establish his former wife's battery or extreme cruelty, his good-faith entry into the marriage, a qualifying relationship with his former wife, and his corresponding eligibility for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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.

² An application or petition that fails to comply with the requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).