U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 23 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

DISCUSSION: The Acting Vermont Service Center 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 marriage with his United States citizen spouse in good faith, and that she battered or subjected him to extreme cruelty during their marriage.

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 United States 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 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 Bangledesh who entered the United States as a nonimmigrant fiancé on October 3, 2010. He married L-K-[1], a U.S. citizen, on November The petitioner and L-K- divorced on September The petitioner filed the instant Form I-360 on December 16, 2013. The director subsequently issued a Notice of Intent to Deny (NOID) requesting evidence of, among other things, the requisite battery and extreme cruelty, and entry into marriage in good faith. The petitioner timely responded with additional evidence, which the director found insufficient and denied the petition on those grounds. The petitioner timely appealed.

We review these proceedings *de novo*.

Battery or Extreme Cruelty

In his initial statement, the petitioner stated that L-K- and her mother called him derogatory names and treated him like a servant. He stated that L-K- attended parties without him and would come home drunk. The petitioner claimed that when L-K- was angry or disagreed with him she slapped his face or the back of his head, kicked his leg, and pushed the back of his head with her finger but he does not provide further probative details regarding any specific incident. The petitioner stated that after he criticized L-K-'s mother, she and L-K- threw his clothes near the garbage and screamed at him to get out of the house after L-K-'s mother hit him with a mop handle. Again, the petitioner does not provide any further probative description of the incident. The petitioner indicated that he went to the police station to report the behavior of L-K- and her mother but was told to go home. The petitioner stated that he was embarrassed, depressed, and worried he would become homeless if thrown out of the house. The petitioner stated that after a while he left L-K- and moved to California.

In response to the NOID, the petitioner recounted that after L-K- told him that he was not the biological father of her child she was no longer intimate with him and went to parties while he stayed at home and took care of the child. The petitioner stated that in early 2012, L-K-'s mother threw hot tea on him after he told her he would not iron her clothes but he does not provide any further probative description of the incident. He stated that L-K- pushed him because he refused to pick up her friend from work, again claimed that she kicked him, slapped him, and spit on him, but provided no details of any specific incident. The petitioner recounted that L-K- insulted him by telling him that he was her "property."

The petitioner also provided an affidavit from his father and letters from his friends. the petitioner's father, stated that L-K- and her mother had no intention to help the petitioner obtain a green card. He indicated that the petitioner, upset and crying, told him that the petitioner was not the biological father of L-K-'s child. stated that after the petitioner told him about his marital problems he spoke with L-K- and her mother. stated that the petitioner told him that he was often hungry, was treated like a domestic helper, and was demoralized by his wife's insults and affairs with other men. The petitioner's father and friends do

[1] Name withheld to protect the individual's identity.

not describe behavior of L-K- that demonstrates that he was subjected to extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted a psychiatric evaluation from , but he provided only the first two pages of the document and not the complete document. The two pages of the document provided by the petitioner contain the same allegations of abuse that were made in the petitioner's statements, and the document's author is not indicated.

On appeal, the petitioner provides the missing pages of the psychiatric evaluation, which is from Dr. In these pages of the document, although Dr. stated that the petitioner continues to suffer from clinical depression, anxiety, and panic attacks as a result of his marriage to L-K-, he had not discussed any alleged incident of battery or extreme cruelty in the psychiatric evaluation in detail.

On appeal, the petitioner asserts that the director erred in not giving any probative weight to the psychiatric evaluation due to the missing pages of the document. He contends that the director should have given more weight to the petitioner's statements and those of his father and friends. The determination of what evidence is credible and the weight accorded such evidence lies within the sole discretion of U.S. Immigration and Citizenship Services. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). In this case, upon a full review of all the relevant and credible evidence, the petitioner has failed to demonstrate that he was subjected to battery or extreme cruelty during his marriage to L-K-. The petitioner generally alleged that he was physically and verbally abused by L-K- and her mother but he does not describe any particular incident in detail, nor does his psychiatric evaluation. The statements from his father and friends describe his emotional state, but do not indicate that they witnessed or were told of any acts of battery, nor do they describe with any detail behavior of L-K- or her mother to demonstrate that the petitioner was subjected to extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the preponderance of the evidence does not establish that L-K- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Entry into the Marriage

In his initial statement, the petitioner recounted that he lived with L-K- and her family members in Georgia. He stated that he and L-K- did not pay rent or utilities, or have joint car insurance because he did not drive, and had a joint bank account for a short period because they did not have much money. In the response to the NOID, the petitioner stated that prior to their marital problems, he and L-K- would spend time together cooking, going out to dinner, the movie theatre, and the grocery store. He again explained why he and L-K- do not have joint documents. The petitioner, however, only briefly described a few shared experiences with L-K-, and does not discuss the first time he met L-K-, their courtship and subsequent engagement, marriage ceremony, marital residence, joint belongings, or other shared experiences with L-K-, apart from the abuse.

mostly discussed the petitioner's marital problems. stated that he attended the petitioner's wedding, and that the marriage between the petitioner and

L-K- was "bona fide," but does not provide any detailed, probative information to establish the petitioner's relationship with L-K- and good faith intentions at the time of marriage.

The petitioner also provided other documents. The 2012 income tax return (which contains no evidence of filing with the Internal Revenue Service (IRS)) is in the petitioner's name and reflects his filing status as "Married filing separately." The bank account statement lists the petitioner and L-K- but is for the month of October 2010 only and shows a $100 deposit, which is not sufficient to establish a commingling of joint finances. The photographs are of the petitioner and L-K- pictured together at their marriage ceremony and on a few other occasions of which the significance is not described.

On appeal, the petitioner asserts that his attempt to resolve his marital problems is indicative of what happens in "a typical South East Asian family." He further argues that he explained why he lacked joint documentation with L-K-. Traditional forms of joint documentation such as joint bank accounts and insurance are not required to demonstrate a self-petitioner's entry into the marriage in good faith. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). 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." *See* 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner has not provided a detailed description of his relationship with L-K-. He does not describe his first meeting with L-K-, their courtship and engagement, wedding ceremony, joint residence, and only generally described their shared experiences. Similarly, his father's affidavit and the letters from his friends lack substantive information to establish his relationship with L-K- and good-faith intentions at the time of marriage.

The petitioner argues that the evidence in the record "is void of any inference" that he and L-K- did not intend to establish a marriage together. Under the "preponderance of the evidence" standard, the petitioner is not relieved from satisfying the basic evidentiary requirements required by the statute and regulations. The petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id. at* 376. In this case, the petitioner has not established by a preponderance of the evidence that he entered into the marriage with L-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to demonstrate that he was battered or subjected to extreme cruelty by L-K- during their marriage, and that he married L-K- in good faith. 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* at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.