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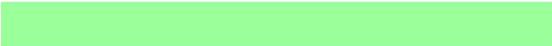


U.S. Citizenship  
and Immigration  
Services



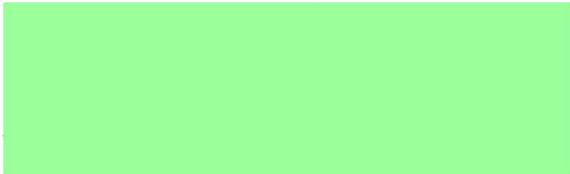
Date: **JAN 30 2015**

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:

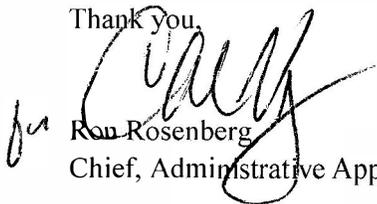


INSTRUCTIONS:

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 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 resided with his wife during their marriage, that she subjected him to battery or extreme cruelty during their marriage, and that the petitioner married her in good faith. 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 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)(A)(iii) of the Act are further explained in 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 is a citizen of Colombia who entered the United States on May 8, 2000, as a nonimmigrant visitor. The petitioner married H-B-<sup>1</sup>, a U.S. citizen, on December [REDACTED] Florida. The petitioner filed the instant Form I-360 self-petition on May 24, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's joint residence with H-B-, her battery or extreme cruelty, and the petitioner's good-faith entry into the marriage. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

We conduct review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The petitioner's contentions on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

*Joint Residence*

On his Form I-360 self-petition, the petitioner indicated that the last address at which he resided with H-B- was on [REDACTED] Florida, but he did not indicate the dates he lived there with her. The petitioner's initial statement submitted with his self-petition did not address residing with H-B- during their marriage. He did not describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with H-B- after they married. The petitioner did not submit any additional statement in response to the RFE.

Affidavits from the petitioner's friends and family submitted in response to the RFE also did not provide any additional information regarding the petitioner's joint residence with H-B- during their marriage. For instance, affidavits from [REDACTED] did not describe any visit, interaction, or social occasion with the couple at their residence, and letters from H-B-'s children did not address living with the petitioner. The mortgage bill in the record, dated April 1, 2010, was addressed only to the petitioner and, therefore, is not probative of the couple's joint residency. The photographs of the couple are unidentified and undated and the petitioner did not demonstrate that they were taken at the marital residence. Further, although the record contains some utility bills addressed to the couple at [REDACTED] without a statement from the petitioner himself and other relevant evidence, the preponderance of the evidence does not show the petitioner lived with H-B- during their marriage. In addition, several of the statements are dated after the petitioner's change of address with the U.S. Postal Service, thereby diminishing their probative value.

On appeal, the petitioner contends that the letters from H-B-'s children show that they had bonded with him and that the photographs show them engaged in family activities together. However, none of these documents address the petitioner and H-B-'s joint residence. Accordingly, the preponderance of the

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<sup>1</sup> Name withheld to protect the individual's identity.

evidence does not demonstrate that the petitioner resided with his wife during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

In the petitioner's initial statement, he described that H-B- yelled at him, insulted him, controlled who he spoke to, and did not allow him to have any friends. According to the petitioner, she told him he was a horrible person and had no value, and he was very scared. He claimed that H-B- took all of his money and threatened to call the police if he did not give her money.

The petitioner did not make any allegation of physical assault or battery, and did not describe in probative detail any actual or threatened violence, psychological or sexual abuse, or other behavior that constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). A letter from [REDACTED] a licensed mental health counselor, submitted in response to the RFE and her follow-up treatment notes submitted on appeal also did not provide additional information regarding any particular incident or behavior that would constitute battery or extreme cruelty. Similarly, letters from [REDACTED] stated only that the couple's marriage had problems, but did not describe battery or any behavior by H-B- that would constitute extreme cruelty. A letter from [REDACTED] failed to describe any mistreatment of the petitioner by H-B-, and a letter from [REDACTED] described the couple as having a stable and happy relationship for six months.

On appeal, the petitioner, through counsel, contends that H-B- tried to run over the petitioner, threatened to harm herself and make it appear as if the petitioner had harmed her, had her brother make threatening telephone calls to the petitioner, and harassed him at work and at his aunt's house. According to counsel, police reports and evidence the petitioner attempted to obtain a restraining order were submitted into the record. However, the petitioner himself has not alleged any of these incidents and the record does not contain any police reports or restraining orders. Although the record contains documentation regarding a temporary restraining order, the case title shows it was not brought by the petitioner, but an unknown woman named M-C.<sup>2</sup> There is no explanation for how this temporary restraining order relates to the petitioner. Similarly, a letter from the State Attorney of the Sixth Judicial Circuit of Florida indicates only that H-B- was charged with harassing telephone calls; however, the petitioner's statement does not allege that H-B- made any harassing telephone calls to him. Even if H-B- made harassing telephone calls to the petitioner, there are no probative details of any telephone calls that establish that any such calls constituted extreme cruelty as that term is defined in the regulation. In addition, while the record contains a translation from a letter from H-B- stating that she "ask[s] forgiveness for . . . try[ing] to run [the petitioner] over," when viewing all of the evidence in the totality, this single sentence, without any allegation or description from the petitioner of the claimed incident, fails to establish by a preponderance of the relevant evidence that H-B- subjected the petitioner to battery or any other behavior that constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established by a preponderance of the relevant evidence that his 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.

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<sup>2</sup> Name withheld to protect the individual's identity.

*Entry into the Marriage in Good Faith*

The petitioner briefly recounted that he met H-B- when a friend recommended that he paint H-B-'s house. The petitioner stated that after he painted her house, she asked if he wanted to rent a room in her house. He described them as being friends and that they started having a relationship in February of [REDACTED]. He stated that he thought he was in love and had found the perfect mate. He recounted that they got married in December of [REDACTED] and that everything was great for the first few months. The petitioner did not further provide probative details of the couple's courtship, wedding ceremony, shared residence, and experiences to establish his good-faith intent to marry H-B-.

In response to the RFE, the petitioner submitted joint bills, a copy of their wedding invitation, several affidavits, copies of photographs, and letters from H-B-. The affidavits from the petitioner's friends did not describe any specific contact with the petitioner and H-B-, any particular visit or social occasion with the couple, or any interactions with the couple that would establish their personal knowledge of the relationship. The copies of the photographs are unidentified and undated. The utility bills are addressed to the petitioner in care of H-B- and are not evidence that they shared any fiscal responsibilities. The letter from H-B- demonstrated her intentions in marrying the petitioner but did not provide sufficient information about the petitioner's marital intentions. Likewise, the cards from H-B-'s children indicated how they felt about the petitioner but without probative testimony are insufficient to establish that the petitioner married H-B- in good faith.

On appeal, the petitioner asserts that he bonded with H-B-'s children, asked her to attend marriage counseling sessions, and had an elaborate wedding. The petitioner does not, however, provide a detailed account of his courtship of and relationship with H-B- such that the deficiencies of the record are overcome. When viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that he entered into marriage with H-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

The petitioner has failed to establish by a preponderance of the relevant evidence that he resided with H-B- during their marriage, that she subjected him to battery or extreme cruelty during their marriage, and that the petitioner married her in good faith. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

**ORDER:** The appeal is dismissed.