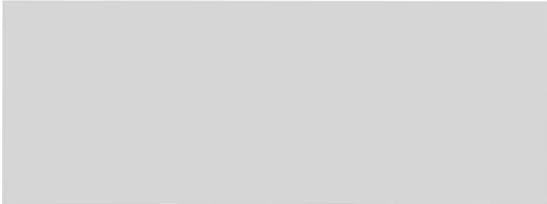




U.S. Citizenship
and Immigration
Services

(b)(6)



JUN 24 2015

DATE:

FILE #:

PETITION RECEIPT #:

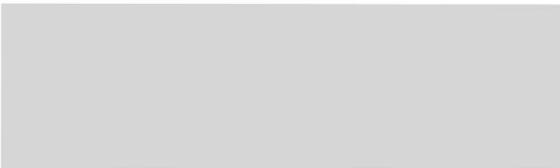
IN RE:

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the petition. 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 his United States citizen spouse.

The director denied the petition because the petitioner did not establish that he entered into the marriage with his United States citizen spouse in good faith and was exempt from the bar to approval of his petition under section 204(g) of the Act, and thus, he also did not demonstrate his eligibility for immigrant classification under section 201(a)(b)(2)(A)(i) of the Act. The director also determined that the petitioner did not establish that his wife subjected him to battery or extreme cruelty.

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 record in this case indicates that the petitioner was in removal proceedings at the time of his marriage. In such a situation, section 204(g) of the Act prescribes:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien’s right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after his marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner

can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, which states in pertinent part:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

8 U.S.C. § 1255(e) (emphasis added).

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 . . . 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 is a citizen of Jamaica who entered the United States on January 13, 2008, as a P-3 nonimmigrant. The petitioner was placed into removal proceedings in March 2010. After removal proceedings commenced, the petitioner married C-H-¹, a U.S. citizen, on [REDACTED], 2011 in [REDACTED] Connecticut. C-H- filed a Petition for Alien Relative (Form I-130) on behalf of the petitioner, but withdrew that petition on June 17, 2011. The petitioner thereafter filed the instant Form I-360 self-petition on July 6, 2011. The director subsequently issued a Request for Evidence (RFE) of, among

¹ Name withheld to protect the individual's identity.

other things, the requisite battery or extreme cruelty and the petitioner's good faith intentions in marrying his wife. 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 timely appealed.

We review these matters on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the petitioner has not established his eligibility. The evidence submitted on appeal does not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal does not demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. The evidence includes the petitioner's statements, statements of the petitioner's family and friends, and cellular telephone text messages. The pages of copied text messages in the record do not indicate the name of the sender or the dates they were sent, although the petitioner indicated that they are text messages that C-H- sent him which he recopied to his email. The language of the text message communications themselves do not provide any evidence of the battery or extreme cruelty to which the petitioner asserts C-H- subjected him.

Traditional forms of documentation are not required to demonstrate that a petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In his initial statement, the petitioner stated that after marrying in [REDACTED] 2011 and moving in with C-H-, they began having difficulties in late March 2011 when he stopped receiving unemployment compensation. He described an incident where he and his wife had a verbal altercation after her former boyfriend began harassing and calling her telephone in the middle of the night. The petitioner stated that they did not resolve the argument and his wife slept in her daughter's room that night. He stated that on a second occasion, under similar circumstances, C-H- kicked him out of their room and he had to sleep on the couch. According to the petitioner, this eventually led to C-H- confiscating his house keys and kicking him out of the home. The petitioner stated that he attempted to reconcile but was unsuccessful and he felt used, hurt, and manipulated. The petitioner did not set forth any probative details regarding C-H-'s treatment of him during these two incidents. In his second statement, the petitioner explained that his wife abandoned the relationship because he was dependent on others and was not behaving as the head of the household should, and that this made him feel less than a man. However, the petitioner's statements did not demonstrate that C-H-'s behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The letters from the petitioner's family and friends also do not establish the requisite battery or extreme cruelty. The petitioner's brother, [REDACTED] did not address any acts of claimed abuse by C-H- in his first letter. In his second letter, Mr. [REDACTED] stated that the petitioner expressed concern that C-H- did not respect him and may have another relationship. He further indicated that on occasions when the former couple argued, he would have to pick up the petitioner because C-H- told him to leave. Mr. [REDACTED] also noted that the petitioner told him he was depressed and feeling disrespected. Mr.

letters did not describe any specific incidents or acts of claimed abuse that would constitute battery or extreme cruelty as defined in the regulation. Similarly, while the letters of the petitioner's mother, [REDACTED], and of [REDACTED], [REDACTED] and [REDACTED] discussed the general deterioration of the petitioner's marriage to C-H-, as relayed by the petitioner, they did not reference or describe any specific incidents or acts of claimed abuse. Mr. [REDACTED] indicated that the petitioner called him often and told him that C-H- was abusing him, but neither of his two statements further described any specific acts of claimed abuse by C-H-.

On appeal, the petitioner has not specifically addressed any legal or factual errors in the director's determination that C-H- did not subject him to battery or extreme cruelty. However, he submits an updated personal statement asserting that C-H- locking him out of the house at night in a dangerous neighborhood and his having to wait more than 45 minutes for someone to pick him up constitutes battery or extreme cruelty. The petitioner further contends, for the first time on appeal, that C-H-'s requests that he engage in certain sexual acts with her that he expressed he did not like constitutes battery or extreme cruelty. However, the petitioner does not provide any substantive information about any of the incidents or acts of claimed abuse. The petitioner also submits a third statement from [REDACTED] who describes a visit during which C-H- called the petitioner derogatory names and caused him to cry while discussing the petitioner's unwillingness to engage in certain sexual acts. Mr. [REDACTED] did not discuss this incident in either of his two prior statements. Although the petitioner explains on appeal, that he specifically asked his brother and friends not to mention his wife's sexual requests, he does not himself discuss the claimed incident in any of his statements. The preponderance of the relevant evidence does not demonstrate that C-H- battered the petitioner 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). Accordingly, the petitioner has not shown that his spouse subjected him to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

On appeal, the petitioner asserts that he disagrees with the director's determination concerning his good faith entry into marriage, but he does not otherwise identify any legal or factual errors in the decision. A *de novo* review of the record in the totality does not reveal any error in the director's conclusion that the preponderance of the relevant evidence does not demonstrate that the petitioner entered into the marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

The petitioner has not addressed the director's determination that section 204(g) of the Act bars approval of the instant self-petition. As the petitioner married C-H- while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, his petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the *bona fides* of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of

the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992); *see also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”). Demonstrating eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act requires the petitioner to establish his good-faith entry into the qualifying relationship by a preponderance of the evidence, and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the *bona fide* marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. As the petitioner here has not established his good faith entry into his marriage to C-H- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the *bona fides* of his marriage under the applicable heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

In addition, the director correctly determined that the petitioner is ineligible for immediate relative classification based on his marriage, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv), because he has not complied with, nor is he exempt from, section 204(g) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director’s grounds for denial, as he has not demonstrated that he entered into the marriage with his wife in good faith and that she subjected him to battery or extreme cruelty during the marriage. In addition, section 204(g) of the Act bars approval of the instant petition, and the petitioner, has therefore, not established his eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.