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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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAY 07 2015**

[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:

[Redacted]

INSTRUCTIONS:

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 of the Vermont Service Center (the director) revoked approval of the immigrant visa petition (Form I-360) after properly notifying the petitioner, 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 revoked approval of the petition on the basis that the petitioner failed to establish that he resided with his spouse, that his spouse subjected him to battery or extreme cruelty during their marriage, and that the petitioner entered into the marriage in good faith. On appeal, the petitioner submits a brief.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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 states, in pertinent part, that:

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:

(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 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.

* * *

(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 Nigeria who entered the United States as an F-1 nonimmigrant on January 11, 1995. The petitioner married N-G-,¹ a U.S. citizen, on [REDACTED]. He filed this Form I-360 petition on March 18, 2011, and the petition was approved on August 20, 2012. The director issued a Notice of Intent to Revoke (NOIR) approval of the self-petition on January 3, 2013, notifying the petitioner that his Form I-360 was granted in error, to which the petitioner timely responded. On August 2, 2013, the director revoked approval of the petition on the grounds that the evidence in the record was insufficient to establish that the petitioner resided with N-G-, and was battered or subjected to extreme cruelty by N-G- during their marriage. The director found further that the evidence failed to establish that the petitioner entered into his marriage with N-G- in good faith. The petitioner timely appealed, asserting that the director did not consider all credible evidence in his case. The petitioner asserted further that the evidence in the record establishes that he entered into the marriage with N-G- in good faith, and that he resided with, and was subjected to extreme cruelty by his spouse during their marriage.

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

¹ Name withheld to protect individual's identity.

Joint Residence

On his Form I-360, the petitioner stated that he lived with N-G- from April 2009 until October 2009, and that they last resided together at [REDACTED] Texas. He indicated in his initial March 8, 2011 affidavit, submitted with the Form I-360, that N-G- moved in with him prior to their marriage, and that soon after the marriage N-G- moved in with her mother in [REDACTED] California in order to attend nursing school. The petitioner provided no specific dates or information regarding the claimed joint residence prior to N-G-'s move to [REDACTED]. The petitioner discussed two visits he made to [REDACTED] to see N-G-, indicating that he stayed in a hotel during the visits to avoid inconveniencing N-G-'s mother and stepfather. The petitioner also indicated that N-G- "came for a visit in December 2010," but that she left the next morning, and subsequently called him from [REDACTED] stating she wanted nothing more to do with him. The petitioner provided no further details regarding the dates and locations that he and N-G- lived together, when N-G- moved to [REDACTED] and any other probative information regarding their shared residence.

The petitioner indicated in a March 15, 2012 affidavit, submitted in response to the director's RFE, that October 2009 was the date that N-G- left Texas to attend nursing school in California. He stated further that he and N-G- visited each other frequently, that N-G- returned to their home in [REDACTED] on weekends and school breaks, and that N-G-'s mail was delivered to their [REDACTED] apartment while she was in [REDACTED]. The petitioner, nevertheless, provided no specific details regarding their shared residence. Although the petitioner also stated that he and N-G- signed a lease agreement for an apartment at [REDACTED] he did not specify the lease term and joint residence dates.

Affidavits from the petitioner's friends, submitted in response to the director's RFE and NOIR, are also vague and lack detailed information relating to the petitioner's and N-G-'s joint residence. [REDACTED] indicated generally that she knew the petitioner when he met N-G-, that the two dated off and on for a couple of years, and that things in the relationship moved quickly after N-G- moved into the petitioner's apartment on [REDACTED]. [REDACTED] indicated that she liked going to the petitioner's and N-G-'s apartment to watch movies. Neither statement contains specific details such as dates, a description of the residence, or the claimed visits to the joint residence. Similarly, [REDACTED] statement that she visited the petitioner and N-G- a few times after their marriage when they lived on [REDACTED] and that their apartment was very neat, lacks probative details about the couple's joint residence.

The petitioner submitted a single page of the lease contract for the [REDACTED] apartment, but it does not list N-G- as a party to the lease or as an occupant. A rental application document for the apartment contains N-G-'s and her daughter's names under the headings "spouse" and "other occupants," and lists the petitioner's name as an emergency contact, but was signed by N-G- nearly nine months after the lease term began. Moreover, the document reflects that N-G- presented a California driver's license for identification purposes.

In response to the director's NOIR, the petitioner submitted a January 28, 2013 letter from a leasing consultant at [REDACTED] Apartments, stating that the petitioner leased an apartment at [REDACTED] from March 9, 2005 until February 1, 2010. The letter does not indicate that N-G- was listed on the lease or was otherwise a resident or occupant at the apartment. An undated letter from the

leasing director of [REDACTED] apartments stated that the petitioner leased an apartment at [REDACTED] beginning January 30, 2010, and that N-G- was an occupant of the apartment until January 20, 2011. The letter does not specify the actual dates of N-G-'s occupancy of that apartment. As noted above, the rental application was not signed by N-G- until October 6, 2010, nearly nine months after the purported lease term began. Furthermore, a student transcript for N-G-, dated February 3, 2010 and submitted in connection with the petitioner's Form I-485 reflects that N-G- lived in [REDACTED] and completed enrollment as a full-time student in [REDACTED] for the school term beginning September 21, 2009, and that she lived in [REDACTED] and was enrolled in the school term beginning January 25, 2010, with an expected graduation date of December 23, 2010.

Additional documentary evidence submitted with the Form I-360 includes a joint December 17, 2009 cable television bill for the [REDACTED] address, with an unpaid balance. In addition, the petitioner submitted a February 14, 2011 Internal Revenue Service letter pertaining to 2009 taxes and a February 2011 energy bill sent to N-G- at the [REDACTED] address.

Although the petitioner claims that N-G- resided with him in Texas, neither he nor his friends provide specific dates or details of the claimed joint residence. In addition, although the document lists N-G-'s daughter as an occupant in the apartment, the petitioner provided no information in his statements about his stepdaughter's residence with him and N-G-. The petitioner submits no documentary evidence of N-G-'s residence at the [REDACTED] address other than a single television cable bill that shows an unpaid balance. Moreover, the bill is dated December 17, 2009, when the petitioner stated N-G- was attending nursing school and residing with her mother in California. The joint residence dates referred to in the [REDACTED] apartment leasing director's letter also conflict with alleged dates that N-G- was attending nursing school and residing in California.

Furthermore, although the petitioner and N-G- may have visited each other while N-G- was attending school, and although N-G- may have intended to return to Texas, visits and intent do not constitute "residence" for immigration purposes. Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that "the term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The preamble to the interim rule regarding the self-petitioning provisions cited section 101(a)(33) of the Act as the binding definition of "residence" and clarified that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home in the United States while continuing to maintain a general place of abode or principal dwelling place elsewhere." 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996). Accordingly, the petitioner failed to establish that the petitioner resided with his U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Marriage

The petitioner stated generally in his initial March 8, 2011 affidavit, that he met N-G- in [REDACTED] Texas, and that he and N-G- dated off and on for a couple of months but lost touch after about a year. The petitioner provided no specific dates or further details regarding their courtship and engagement other than to indicate that "a couple of years later" he ran into N-G- at a party, the two "stayed in touch, dated, talked a lot over the phone" and decided to get married. The petitioner indicated that their parents were pleased with the marriage, that they had several things in common, that he supported N-G-

financially, and that he was in love. The petitioner provided no specific information about shared experiences or other details discussing his relationship with N-G-. The petitioner recounted that “soon” after they married, N-G- moved in with her mother in [REDACTED] California, and began attending nursing school there. He stated that he and N-G- talked on the phone and emailed each other every day after N-G- moved to [REDACTED] and he mentioned two occasions on which he visited N-G- in [REDACTED]. The petitioner indicated further that he and N-G- tried unsuccessfully to reconcile their relationship when she “came for a visit in December 2010.” The petitioner did not, however, provide a specific discussion about the visits other than as it related to the claimed abuse by N-G-.

In response to the director’s RFE, the petitioner submitted a March 15, 2012 affidavit, in which he stated only generally that “things were light and fun” when he first met N-G-, and that when they “eventually moved in together it was great.” He indicated again that he and N-G- traveled between [REDACTED] to visit one another on numerous occasions after N-G- moved to California for school, however he provided no particular details about the couple’s relationship and shared experiences. The petitioner also stated that various photographs contained in the record were taken in [REDACTED] when he visited N-G- but provided no specific details about the events depicted in the photos. Moreover, although the petitioner mentioned for the first time in this statement that he has a stepdaughter, he does not describe their relationship or interactions as a family in this affidavit or any of his other statements. In addition, although wedding photographs contained in the record demonstrate the petitioner’s legal marriage, they fail to establish that the union was entered into in good faith.

In a February 4, 2013 response to the director’s NOIR, the petitioner stated that he and N-G- knew each other for about five years before they got married, that the two dated off and on during that time, that he gave N-G- a key to his apartment, and gave his apartment leasing office authority to allow her into the apartment. The petitioner also stated that he and N-G- made plans to marry around April 2009. The petitioner provided no further details regarding dates or shared experiences relating to the couple’s courtship and engagement. The petitioner indicated that N-G- tried to get into a nursing school in Texas, but was unable to get accepted without “an uncertain waiting period” and therefore decided to go to a nursing school in [REDACTED]. He also indicated generally, that he and N-G- spent a lot of time together in their apartment or going out when she visited [REDACTED]. In addition, the petitioner stated that he designated N-G- as the beneficiary of his life insurance policy, and that he and N-G- did not file taxes jointly because it was financially more advantageous to file separately. The petitioner fails, however, to provide any specific information regarding the couple’s courtship, wedding, and shared residence and experiences to establish their relationship history and his good-faith intent.

Affidavits from friends, submitted in response to the director’s RFE, also fail to provide probative details to demonstrate that the petitioner entered into his marriage with N-G- in good faith. [REDACTED] stated generally that she heard about the petitioner’s decision to marry N-G- from a friend and her daughter, that she talked to the petitioner and N-G- a few times over the phone, and that the petitioner “was full of praise for his wife” after the marriage. [REDACTED] stated generally that she learned of the petitioner’s intention to marry N-G- when he called her on the phone, and that she spoke with the couple on the phone in July 2010, and that all seemed well. These friends did not meet N-G- personally, and they failed to describe any particular interaction with the petitioner and N-G- to indicate the petitioner’s good-faith intent. Similarly, [REDACTED] indicated generally in affidavits that they interacted

socially with the petitioner and N-G- and that the couple seemed to be happy and in love. However, none of the individuals provided specific or detailed information about interactions or visits that would establish the good-faith relationship between the petitioner and N-G-. An affidavit from [REDACTED] submitted in response to the director's NOIR, stated that she watched movies with the petitioner and N-G- at their home, and that their home environment was "nice and relaxed" but provided no further probative description of the visit to demonstrate the petitioner's good-faith entry into the marriage with N-G-.

The record also contains December 2009 and January 2010, email correspondence between the petitioner and N-G-, and evidence that, as of January 23, 2010, N-G- was listed as the beneficiary of the petitioner's life insurance policy on his employment records.

Overall, although the petitioner has submitted insurance information and a joint utility bill, the petitioner's statements lack detailed information about his relationship and shared life with N-G-, and his intentions in marrying her. Affidavits from the petitioner's friends also lack probative descriptions or examples of interactions that would establish the nature of the relationship between the petitioner and N-G-. Upon review, the record does not establish, by a preponderance of the evidence, that the petitioner entered into the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The petitioner stated in his March 8, 2011 affidavit that his relationship with N-G- went well until his second visit to see her in California, when she insulted him for getting an inexpensive hotel room, would not answer his calls, and avoided him. The petitioner stated that after he returned to Texas, N-G- continued to avoid his phone calls, and would text "only occasionally" to say she was busy. He indicated that N-G- also insulted him during phone conversations and that she told him she could have him deported if she wanted to. The petitioner recounted that "on one of her visits to [REDACTED]" N-G- insulted his religious practices. He stated further that "one day" he called N-G- and she told him she was seeing someone else. The petitioner stated that he and N-G- tried to reconcile their relationship when she came for a visit in December 2010, but that they had an argument on Christmas Eve, she left the next morning, and the relationship ended a week later. The petitioner does not describe any incident of claimed battery or physical abuse. Furthermore, although the petitioner indicated generally that N-G- insulted him and treated him disrespectfully, his statements do not demonstrate that N-G- threatened him with violence, psychologically or otherwise abused or exploited him, or subjected him to extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

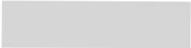
The petitioner added, in an affidavit submitted in response to the director's RFE, that N-G- began to criticize the way he dressed after their marriage, and that she became angry if he did not text her two to three times a day when she was in [REDACTED]. He indicated that N-G- also complained that he did not send her enough money, and that she yelled at him in front of other people. In addition, he indicated that N-G- flirted with other men, and that she became angry if the petitioner did not want to become intimate with her. Again, the petitioner's general claims do not demonstrate that he was battered, or that N-G- subjected him to extreme cruelty as described in the regulation.

In his February 4, 2013 response to the director's NOIR, the petitioner added that after their marriage, N-G- began "barking orders" at him and getting angry if things were not done the way she wanted them to be done. He indicated that N-G- demanded, rather than asked for money, and that she became upset if he was unable to give her money. The petitioner also indicated that N-G- "quizzed" him on the phone regarding his whereabouts, and acted superior to him and yelled at him in public. He stated that N-G- flirted with other men and was unfaithful to him, and that N-G- made sexual demands and threatened to have him deported if he did not comply. In addition, the petitioner stated that N-G- stopped praying with him and insulted him when he prayed, that he felt he could not pray when she was around, and that he began to avoid people and gatherings because he did not want to run into N-G-, or be asked about his marriage. The statements only vaguely refer to verbal and sexual abuse, and lack probative details of any specific incident of claimed abuse. Moreover, the statements do not demonstrate that N-G- battered the petitioner, threatened him with violence, or abused or exploited him such that the behavior constituted extreme cruelty as that term is defined in the regulation.

Affidavits from friends, submitted in response to the director's RFE, also fail to establish battery or extreme cruelty against the petitioner. [REDACTED] did not discuss any abuse against the petitioner, and although [REDACTED] indicated that she "heard of problems and discord" in the petitioner's marital relationship, she provided no details or further information about the "problems." [REDACTED] also stated only generally that the petitioner told her that N-G- often lost her temper after they married. [REDACTED] indicated, without details, that she and the petitioner's mother counseled the petitioner over the phone as his relationship deteriorated, and that sometimes she could hear N-G- in the background "abusing him while he was on the phone." [REDACTED] stated generally that she was shocked to see N-G- "openly disrespect and abuse" the petitioner after their marriage. None of the friends provide probative details of any specific incident of abuse to establish that the petitioner was battered or subjected to extreme cruelty by N-G-.

Affidavits submitted by the petitioner's friends in response to the director's NOIR, similarly fail to establish battery or extreme cruelty against the petitioner. [REDACTED] stated in a second affidavit that she visited the petitioner and N-G- on one occasion after N-G- started school in [REDACTED] and that N-G- was angry with the petitioner and told him she wanted more money. [REDACTED] stated that N-G- answered the phone once when she called the petitioner, and that N-G- yelled at the petitioner, would not give him the phone, and told her not to call the petitioner again. She also indicated that the petitioner later told her that N-G- threatened him with deportation whenever she got mad. These descriptions again lack detail about the claimed abuse and fail to establish any specific instances of battery or extreme cruelty against the petitioner by N-G-.

The petitioner also submitted assessment letters from counselor, [REDACTED] and counseling intern, [REDACTED] of the [REDACTED]. The assessments reflect that the petitioner attended individual counseling sessions at the center between February 2011 and May 2011, and that the events and emotional effects that he self-reported are "common indicators of emotional, psychological, economic and spiritual abuse." The assessments indicated generally that the petitioner was insulted and humiliated and suffered emotionally, that N-G- had an extramarital affair, and that the petitioner was the only one to contribute financially to the relationship. However, the assessments do not describe or establish any specific instances of battery or extreme cruelty, as defined in the regulation, by N-G- against the petitioner.



Upon review, the evidence contained in the record lacks probative details to establish that the petitioner was battered by N-G-, and does not demonstrate, by a preponderance of the evidence, that her behavior was part of an overall pattern of violence or constituted extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.