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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



Date: **MAY 07 2015**



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 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](http://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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360) and the matter is now before the 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 former spouse, and that he has been battered or subjected to extreme cruelty by his spouse. 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).

An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) 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 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.

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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of India who last entered the United States as an F-1 nonimmigrant on March 24, 2012. The petitioner married K-D-<sup>1</sup>, a U.S. citizen, on [REDACTED]. He obtained a divorce from K-D- on [REDACTED], and filed this Form I-360 petition on February 25, 2014. On April 24, 2014, the director issued a Request for Evidence (RFE) of joint residence and the requisite battery and/or extreme cruelty to which the petitioner timely responded with additional evidence. The director found that the evidence in the record was insufficient to establish that the

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

petitioner resided with, and was battered by or subjected to extreme cruelty by his former spouse during their marriage. The petition was subsequently denied on August 22, 2014. The petitioner timely appealed, asserting that evidence in the record establishes that he and K-D- resided together in India after their marriage, and that K-D- subjected him to extreme cruelty 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 denial. The appeal will be dismissed for the following reasons.

#### *Joint Residence*

The petitioner stated on his Form I-360 that he and K-D- resided together from February 17, 2012 to March 24, 2012, and that they last resided together in India. The petitioner indicated in a statement submitted with his Form I-360 that although he is originally from India, he has lived in the United States since 2008 when he came to go to college. The petitioner recounted that he returned to India in December 2011 to attend his sister's wedding, and that he met K-D- while in India. The petitioner indicated further that he and K-D- were subsequently married in an arranged marriage in [REDACTED] but that he returned to the United States to continue his studies in [REDACTED] about a month after the wedding, and K-D- moved back to her home in North Carolina about two months after their marriage. The petitioner provided no other details or information about the time that he and K-D- spent together in India. The petitioner recounted further that he and K-D- did not live together in the United States, although he visited K-D- in North Carolina on two occasions.

The petitioner added in a second statement, submitted in response to the director's RFE, that K-D- was visiting India from North Carolina when they met, and that he and K-D- lived together in India at his parent's home after their marriage until he returned to the United States on March 23, 2012. The petitioner provided no specific or further details, however, about his claimed joint residence with K-D- in India.

With his Form I-360, the petitioner submitted letters from friends and family members, [REDACTED]. However, the letters do not describe the petitioner's and K-D-'s residence together in India. Letters submitted in response to the director's RFE also fail to establish that the petitioner resided with K-D-. The petitioner's father, [REDACTED] stated that the petitioner lived with him for a month after the marriage, but did not state that K-D- also lived with them. In addition, letters from [REDACTED] lack any specific or probative descriptions about the petitioner's and K-D-'s claimed joint residence.

In response to the director's RFE, the petitioner also submitted roundtrip airline flight itineraries for trips he took between [REDACTED] and [REDACTED] North Carolina between September 22 and September 24, 2012, and between March 9 and March 10, 2013.

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

further 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). Here, the record reflects that the petitioner was not residing in India with his parents when he met and married K-D-. Rather, he was visiting his family while maintaining his principal dwelling in [REDACTED]. Similarly, the record reflects that K-D-’s principal dwelling place was in North Carolina. Accordingly, any time purportedly spent with K-D- at his family’s home after their wedding does not constitute joint residence under the Act and regulation. The two visits that the petitioner made to see K-D- in North Carolina also do not constitute joint residence.

Upon review of the record, the petitioner failed to establish, by a preponderance of the evidence, that he and K-D- resided together during their marriage. Statements by the petitioner and his friends and family lack probative details of his residence with K-D-. Furthermore, even if the statements contained sufficient probative and relevant details of their time together in India, any time spent together in India after the marriage does not constitute joint residence, as neither the petitioner’s, nor K-D-’s principal dwelling place was in India. Accordingly, the record does not 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.

#### *Battery or Extreme Cruelty*

The petitioner indicated in his initial statement that K-D-’s behavior towards him changed when she returned to North Carolina after their marriage. He recounted that K-D- ignored his phone calls, did not want to visit or spend time with him, did not want to open up joint accounts or rent an apartment together, and did not want to help him with his U.S. immigration process. He indicated further that K-D- did not pick him up at the airport when he visited her, did not call him or his family on important occasions, and was indifferent and unfriendly towards him. The petitioner also stated that he became depressed due to his marital situation, and because he worried about the impact a divorce from K-D- would have on his ability to remarry and on his family’s reputation in Indian society. Although the petitioner indicates generally that K-D- treated him disrespectfully and with indifference, his statements do not demonstrate that K-D- battered him, threatened him with violence, psychologically or otherwise abused or exploited him, or 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 repeated his initial claims of abuse in a second statement submitted in response to the director’s RFE. In addition, he stated his belief that K-D- had an affair during the marriage, and that K-D- intentionally hurt his feelings. The statements do not demonstrate that K-D-’s behavior constituted battery or extreme cruelty as the term is defined in the regulation.

Letters from the petitioner’s friends and family, submitted with the Form I-360, also fail to establish that K-D- subjected the petitioner to battery or extreme cruelty during the marriage. [REDACTED] indicated generally that the petitioner became nervous and depressed due to K-D-’s behavior. A letter from the person that performed the petitioner’s marriage referred to the petitioner’s concern that his divorce would bring shame to him and his family. The letters do not describe any specific incidents of battery or extreme cruelty by K-D- towards the petitioner. Similarly, letters submitted in response to the director’s RFE, from [REDACTED]

\_\_\_\_\_ indicated generally that K-D-'s treatment caused the petitioner stress and took a mental toll on him. The petitioner's father added that K-D- also took money from the petitioner while he was in school. Nevertheless, the letters do not describe specific incidents of battery or extreme cruelty against the petitioner.

An assessment from a licensed clinical professional counselor, submitted with the petitioner's Form I-360, discusses the petitioner's shame and sadness after the breakdown of his marriage, and reflects that the petitioner was diagnosed with Post Traumatic Stress Disorder (PTSD) based on his self-report of treatment by K-D-. The assessment does not, however, describe instances of battery or extreme cruelty against the petitioner by K-D-. An additional October 2, 2014 letter from the counselor, submitted on appeal, reflects further that the petitioner attended seven counseling sessions between January and September 2014, and that he had low self-esteem and seemed depressed due to feelings of deception, rejection, and guilt related to K-D-'s behavior. Again, however, the counselor describes no specific incidents of battery or extreme cruelty by K-D- against the petitioner.

Upon review, the evidence demonstrates that the petitioner's mental health may have been negatively impacted by K-D-'s lack of interest in him and in their marriage. The evidence does not, however, establish that K-D- battered the petitioner or that her behavior was part of an overall pattern of violence or otherwise constituted extreme cruelty. Accordingly, the record is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by K-D- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Qualifying Relationship*

Beyond the decision of the director, as the petitioner failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate a connection between his divorce and such battery or extreme cruelty. The petitioner consequently failed to establish a qualifying relationship with K-D- under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, and he is ineligible for immediate relative classification based on such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.<sup>2</sup>

#### *Conclusion*

The petitioner failed to establish, by a preponderance of the evidence, that he resided with K-D-, as set forth in section 204(a)(1)(A)(iii)(II)(dd) of the Act, and that he was battered by or subjected to extreme cruelty during the marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. He also failed to establish that he had a qualifying relationship with K-D- and was eligible for immediate relative classification as required under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

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<sup>2</sup> An application or petition that fails to comply with the technical 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).

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*NON-PRECEDENT DECISION*

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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.