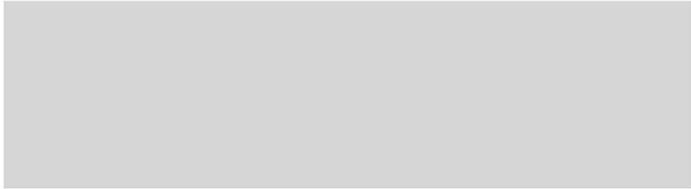




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 15 2015**

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 Director, Vermont Service Center, denied the petition, and the petitioner filed an appeal that we subsequently rejected. The petitioner filed a timely motion to reopen and reconsider. The motion is granted, and the matter is reopened. 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 a United States citizen.

The director denied the petition for failure to establish that his U.S. citizen spouse subjected him to battery or extreme cruelty.

On appeal, the petitioner submits a brief.

Applicable Law

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 individual who is no longer married to a citizen of the United States remains eligible to self-petition under these provisions if he or she 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) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The petitioner was born in Egypt. The record shows that the petitioner initially entered the United States on October 16, 1996, as a B-1 nonimmigrant visitor and on July 17, 2005, was paroled into the United States as an adjustment applicant. He married his first wife, N-S-,¹ on [REDACTED] 1994, and claims to have divorced her on [REDACTED] 2000. He married his second spouse, N-B-, on [REDACTED] 2000, and claims to have divorced her on [REDACTED] 2003.² He married his U.S. citizen spouse,

¹ Names withheld to protect the individuals' identity.

² The validity of the petitioner's Egyptian divorces have been at issue in prior proceedings before this agency. In the instant proceeding we have made no determination on this issue as we find the petitioner ineligible on the ground cited by the director.

P-B-, on [REDACTED] 2003, in [REDACTED] Tennessee. On his Form I-360 self-petition, the petitioner indicated that he and P-B- resided together from March 2003 to September 2005. The record shows that they divorced on [REDACTED] 2009. The petitioner filed the instant self-petition on July 5, 2011. On September 21, 2012, the director issued a request for evidence (RFE) that, among other things, P-B- subjected the petitioner to battery or extreme cruelty. The petitioner responded, but the director found the response insufficient to establish the petitioner's eligibility and denied the petition on this ground. The petitioner filed an appeal, which we subsequently rejected. The matter is now reopened on motion.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Extreme Cruelty or Battery

In his initial affidavit, the petitioner asserted that he and P-B- both worked at a [REDACTED] restaurant and that they started dating after P-B-'s car broke down and he gave her rides to work. He asserted that after their marriage they were happy and "doing well for about nine (9) months." The petitioner stated that their relationship began to deteriorate when P-B- started to hang around some old friends and began to come home late. According to the petitioner, P-B- started to ask him for more money, and he was eventually forced to close their joint checking account because of her "irresponsible overdraft behavior." The petitioner indicated that one day he came home early from work and found P-B- in their house "smoking something that had a really strange smell" with two of her friends. The petitioner stated that P-B- became very agitated and loud, "cussing" at him, and demanding that he leave the house. He generally described that P-B- and one of her friends pushed him, and then P-B- attacked him with a broom, so he left his house. The petitioner did not further elaborate on this incident. After that, the petitioner explained that P-B- began to use drugs more frequently, used derogatory language against him, threatened to have him deported to Egypt, and was eventually arrested for drug-related charges. The petitioner asserted that he and P-B- were kicked out of two apartments due to her "rowdy friends and drugs," that P-B- took all of his money, and that their home life was increasingly unstable. The petitioner stated that P-B- once came to his place of employment to demand money, pushed him, and caused such a scene that his manager fired him. The petitioner recounted another time when he came home and found P-B-'s daughter having sex on his bed with two men who dragged the petitioner out of his own home. The petitioner indicated that he suffered increasing emotional pain from P-B-'s behavior, often slept in his car, and stayed in motels. He stated that he rented a car and loaned it to P-B-'s niece, but that the niece never returned the car. The petitioner asserted that he ultimately left P-B- when he came home and found her having sex with another man.

The petitioner also submitted letters from friends and family; however, these primarily related to his character. [REDACTED] stated that the P-B- "was going through changes and it conflicted with their marriage," but that the petitioner was a good man. [REDACTED] stated that P-B- used drugs and was a very bad person. Neither Ms. [REDACTED] nor Mr. [REDACTED] included probative details to establish that

P-B- battered the petitioner or subjected him to extreme cruelty. The petitioner included two letters from P-B-, who indicated in one letter that their marital problems started when the petitioner refused to let her daughter's boyfriend move in with them. P-B- asserted that she "was hanging with the wrong people and . . . started doing drugs." In her second letter, P-B- stated that she was a poor wife, the petitioner was a good husband, she regretted using drugs, and she wanted to reunite with the petitioner. Neither of P-B-'s statements describes any specific incidents of abuse or battery against the petitioner.

The petitioner included evidence that the management of one apartment had evicted him and P-B- and that another apartment declined to renew their lease; however, neither document reflects that P-B-'s behavior or treatment of the petitioner served as the basis for these actions. In fact, the notice of termination indicates that it was for non-payment of rent. The petitioner provided evidence that his bank account had a deficiency of \$2,930.95 as of January 10, 2006; however, P-B-'s name is not on the account. Moreover, as the notice postdates the September 2005 date that the petitioner claimed they ceased to live together, the petitioner has not established that P-B- caused the account to be overdrawn. Accordingly, these documents do not establish that P-B- subjected the petitioner to battery or extreme cruelty.

The petitioner submitted a June 22, 2011 psychological evaluation in which his licensed clinical social worker recounted the episodes of alleged abuse that the petitioner described to her, but the evaluation does not include additional probative details beyond those contained in the petitioner's initial affidavit. The clinician concluded by indicating that she diagnosed the petitioner with Major Depressive Disorder based on "a very dysfunctional relationship with his ex-wife," and acknowledging that he has improved since he moved away from his wife six years before the assessment.

In response to the RFE, the petitioner provided additional affidavits from friends. [REDACTED] generally stated that the petitioner "complained [of] the abuse and the bad traitement [sic] of his wife [and told him that she]...called him bad names." Mr. [REDACTED] indicated that in March of 2005 he witnessed P-B- call the petitioner "a bad name" and "almost" hit him in the face, but does not provide any probative details about the incident. Mr. [REDACTED] provided another statement in which he reiterated that the petitioner was of good character, but that P-B- went on drugs after their marriage and "changed for the worse." Mr. [REDACTED] did not claim to have witnessed any episodes of abuse by P-B- against the petitioner.

On appeal, the petitioner asserts that he has provided sufficient evidence to establish that P-B- battered him and subjected him to extreme cruelty, and suggests that the director's decision would have been different if the petitioner were a woman. He points to his clinician's assessment as evidence that P-B- subjected him to battery or extreme cruelty. As discussed, we have reviewed this case de novo, including the psychological evaluation. As it relates to the petitioner's claim of abuse, the statements of the petitioner, his friends and family, and his licensed clinical social worker do not contain specific and probative details of his relationship with P-B- to establish that she battered the petitioner or that her behavior included other actual or threatened violence, psychological or sexual

abuse or otherwise constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has not provided sufficient evidence to demonstrate by a preponderance of the evidence that P-B- subjected him to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As an additional matter, the petitioner has not established a qualifying relationship with P-B- and corresponding eligibility for immediate relative classification.³ Although the petitioner has submitted a divorce decree that demonstrates his marriage to P-B- ended within two years before this petition was filed, he failed to establish the requisite battery or extreme cruelty and also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Good Moral Character

The petitioner also has not established his good moral character. Primary evidence of a self-petitioner's good moral character is the self-petitioner's affidavit, which should be supported by local police clearances or state-issued criminal background checks. 8 C.F.R. § 204.2(c)(v). The petitioner filed the instant petition on July 5, 2011, and advised that he had lived in [REDACTED] Georgia for four years. The petitioner initially provided a [REDACTED] Tennessee police department clearance; however, the results were based on a check for only one of the petitioner's aliases and did not cover [REDACTED] Georgia.

On September 21, 2012, the director issued an RFE requesting, among other things, an affidavit from the petitioner attesting to his good moral character and criminal history clearances or records from each place he resided for a least six months during the three-year period prior to filing the petition. The director specifically listed two additional aliases that she identified in the petitioner's record and explained that if the petitioner intended to submit name-check clearances, he was required to supply the law enforcement agency with all aliases he had used. The petitioner provided a statement indicating that he had lived in [REDACTED] Georgia for the past four years and never been arrested. He also provided letters from the [REDACTED] Georgia Police Department and the [REDACTED] Tennessee Sheriff's Office stating that a search for the petitioner's name did not result in evidence of criminal records. However, while the petitioner provided name checks for the three names the director found in the record, he failed to provide name checks for all aliases that he has used, including names that are recorded on two 2011 Internal Revenue Service Forms W-2 that he submitted in support of his prior Form I-485 application; "[REDACTED]" and "[REDACTED]" More specifically, the [REDACTED] Georgia search

³ 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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was based on only three of the petitioner's five aliases. In any further proceeding where the petitioner chooses to provide a police clearance based on a name check, including any additional motions on this petition, the name checks must include all of his aliases.

Because the petitioner has not provided complete police checks for all of his aliases, he also has not demonstrated that he is a person of good moral character, as required section 204(a)(1)(A)(iii)(II)(bb) of the Act. Because the police clearance in the record does not include all aliases, the petitioner has not provided required initial evidence to establish his good moral character.

Conclusion

On appeal, the petitioner has not demonstrated that his U.S. citizen spouse subjected him to battery or extreme cruelty, that he shared a qualifying relationship with a U.S. citizen spouse and corresponding eligibility for immediate relative classification, and that he has good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.