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U.S. Citizenship
and Immigration
Services

[REDACTED]

B9

FILE:

EAC 05 226 52296

Office: VERMONT SERVICE CENTER

Date:

04/14

IN RE:

Petitioner: [REDACTED]

PETITION:

Petition for Special Immigrant Battered 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]

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of 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 because the record did not establish that the petitioner entered into their marriage in good faith, and that he was battered by or subjected to extreme cruelty by his spouse.

The petitioner submits a timely appeal.

Section 204(a)(1)(A)(iii) 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:

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].

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 . . . , 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 standard and 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:

Evidence for a spousal self-petition –

(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.

The petitioner in this case is a native and citizen of Morocco who married T-Z,¹ a United States citizen, in Morocco on January 10, 2002. The petitioner entered the United States on July 7, 2003 as a K-3 nonimmigrant. The petitioner filed this Form I-360 on August 11, 2005.² On January 24, 2006, the director issued a Request for Evidence (RFE) to the petitioner. In response to the RFE the petitioner requested an additional 60 days to submit evidence. On April 28, 2006, the director issued a Notice of Intent to Deny the petition. The petitioner responded to the director's RFE and NOID on May 22, 2006. After reviewing the evidence submitted, the director denied the petition on June 29, 2006, finding that the petitioner failed to establish that he had been

¹ Name withheld to protect individual's identity.

² Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, filed in the petitioner's behalf by his citizen spouse that was denied by the Service for abandonment on December 15, 2004. The record also contains a Form I-485, Application to Adjust Status, that was denied by the Service on December 8, 2005.

battered by or subjected to extreme cruelty by his spouse and that he entered into his marriage in good faith. The director's discussion will not be repeated here. The petitioner, through counsel, submitted a timely appeal and brief. As will be discussed, we concur with the director's determinations and find that the petitioner's appellate submission does not overcome the grounds for denial of the petition.

Battery or Extreme Cruelty

With his initial filing, the petitioner claimed that his spouse's attitude towards him began to change "shortly after" he arrived in the United States when his spouse decided to move to a different state without the petitioner. The petitioner claimed that his spouse hid the fact of their marriage from her family and humiliated the petitioner by calling him names. The petitioner claimed that on one occasion his spouse threw coffee on him and on another occasion she hit the petitioner in the face with her purse. Finally, the petitioner claimed that his spouse "forbid" him from working, left him in the apartment with no food, and did not let him get the mail. In a second statement, dated July 21, 2005, also submitted at the time of filing, the petitioner elaborated further on his claim that his wife moved to another state without him and humiliated him. In this second statement, however, contrary to the claim made in the previous statement, the petitioner states that his spouse "didn't care" whether he got a job and although he tried to find work, he was not successful.

In addition, the petitioner submitted two statements from an acquaintance, [REDACTED] who stated that the petitioner "waited patiently for his wife to allow [emphasis in original] him to come to Texas" and that he was "unable to look for employment because he expected her to send for him any day." [REDACTED] further stated that she heard several telephone conversations between the petitioner and his spouse where she could hear the petitioner's spouse "screaming and cursing" at the petitioner and calling him and his family derogatory names.

The petitioner also submitted two statements each from his brother and his parents. In their affidavits, the petitioner's family members reiterate the petitioner's claim regarding his spouse leaving the petitioner when she moved to another state and the claim that the petitioner's spouse treated the petitioner with "disrespect" and called the petitioner and his family names.

In response to the director's RFE and NOID, the petitioner submitted an additional statement, further describing how his spouse would criticize his family and the way he ate, dressed, and spoke. The petitioner also reiterated his previous claims that his spouse would yell at him. We note that in this statement, the petitioner indicates that he had obtained a job and that his spouse dropped him off at his job, despite his previous claims that his spouse "forbid" him from obtaining employment and sabotaged his employment attempts.

On appeal, counsel cites to *Hernandez v. Ashcroft*, 345 F.3d 824, (9th Cir. 2003), to support the petitioner's claim of extreme cruelty. In *Hernandez*, the petitioner [REDACTED] had been violently physically assaulted by her spouse on several occasions. After two assaults, which both took place while [REDACTED] resided with her spouse in Mexico, [REDACTED] fled to the United States fearing that her spouse would be able to find her in Mexico. After a time, [REDACTED] spouse obtained [REDACTED] phone number in the United States and persuaded her to let him visit her in the United States. Once in the United States, [REDACTED] spouse convinced [REDACTED] of his remorse and agreed to marriage counseling if she would return with him to Mexico. [REDACTED] agreed and the two returned to Mexico where, after a brief period, [REDACTED] was again brutally attacked by her spouse. After receiving medical treatment for her injuries, the petitioner returned to the United

States. [REDACTED] was placed in proceedings and sought suspension of deportation.³ The immigration judge denied [REDACTED] suspension request finding that her testimony lacked credibility and that she failed to prove that she was a victim of domestic violence. On appeal to the BIA, the BIA reversed the Immigration Judge's adverse credibility determination but concluded that because the physical violence occurred in Mexico, [REDACTED] was unable to show that she had been battered by or subjected to extreme cruelty in the United States.⁴ In reviewing the BIA's decision, the 9th Circuit found there was no dispute that the abuse suffered by the petitioner in Mexico would qualify as battery or extreme cruelty. The sole question considered by the Court was whether the petitioner's spouse's actions "in seeking to convince [REDACTED] to leave her safe haven in the United States in which she had taken refuge can be deemed to constitute extreme cruelty." In determining that the petitioner had been subjected to extreme cruelty, the court found that the "interaction between [REDACTED] and [her spouse in the United States] made up an integral stage in the cycle of domestic violence, and thus the actions taken by [REDACTED] spouse] in order to lure [REDACTED] back to the violent relationship constitute extreme cruelty."

These facts are not applicable to the instant case. In this case, the petitioner has failed to show that there was any "cycle" of domestic violence. The facts as described by the petitioner do not show that the petitioner's spouse's actions were aimed at maintaining control over the petitioner. The 9th Circuit noted that the interaction that took place between [REDACTED] and her spouse was during "a well-recognized stage within the cycle of violence," known as the "contrite" phase which is both "psychologically and practically crucial to maintaining the batterer's control." However, contrary to the facts of *Hernandez* where [REDACTED] was forced to flee to the United States to get away from her spouse and then persuaded to return to Mexico by her spouse during this "contrite" phase, in the instant case, it was the petitioner's spouse who left the petitioner and the petitioner who continued to pursue the relationship. According to the petitioner's statements and those of his family members, the petitioner's spouse did not express any interest in having the petitioner join her in another state and only agreed to his move after repeated requests by the petitioner and his persistence in continuing the relationship. These facts do not demonstrate that the petitioner's spouse attempted to or actually ever maintained control over the petitioner. The petitioner's claims that his spouse was critical of him, that she spoke to him harshly and criticized the petitioner and his family also do not amount to a finding of extreme cruelty. As noted by the 9th Circuit in *Hernandez*, because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship [rises] to the level of domestic violence"

Counsel's assertion regarding the petitioner's spouse's "economic control" is equally unpersuasive. As noted earlier, the petitioner's testimony regarding his employment is contradictory. While the petitioner initially claimed that his spouse attempted to sabotage his employment, he subsequently indicated that he had a job and described an instance where his spouse actually drove him to his work. The general claims made by the petitioner fail to establish that he was the victim of any act or threatened act of violence, including any forceful detention, psychological or sexual abuse or exploitation, or that his spouse's actions were part of an overall pattern of violence. Accordingly, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

³ Although not relevant to this discussion, we note that [REDACTED] also sought relief based upon adjustment of status through a Form I-130 filed in her behalf by her spouse.

⁴ While the current law does not contain the requirement that the abuse have occurred in the United States, the law applicable at the time of [REDACTED] petition did include this requirement.

Good Faith Entry into Marriage

In the statement submitted by the petitioner at the time of filing, the petitioner indicated that he met his spouse in 2001, through his family. The petitioner indicated that he and his spouse would write letters, talk on the phone, and that eventually the relationship “became very intimate” and they decided to get married. The petitioner provided no further details regarding the date he met his spouse, how long they knew each other before deciding to marry, or any other details about their courtship. The affidavits submitted on the petitioner’s behalf provide the same general information that was contained in the petitioner’s statements.

As documentary evidence, the petitioner submitted six undated, uncaptioned photographs and a lease for an apartment at [REDACTED]. While the document shows the lease term being from January 20, 2005 until February 28, 2006, the lease contract actually began June 10, 2005, nearly six months into the lease term.

In the statement provided by the petitioner following the director’s RFE and NOID, the petitioner stated that when his spouse came to Morocco, she was “happy to be there” and “seemed so in love.” The petitioner also submitted copies of cards and letters sent to him by his spouse and additional photographs. However, while the cards and letters and the petitioner’s statements regarding his spouse’s feelings are evidence of his spouse’s intent in marrying the petitioner, they offer little probative value in assessing the petitioner’s intent in marrying his spouse. Further, despite a claimed relationship of more than two years, the photographs appear to have been taken on only two separate occasions. The petitioner has not submitted any other photographs documenting occasions or events spent together.

On appeal, the petitioner does not address the director’s finding regarding the petitioner’s failure to establish that he entered into the marriage in good faith.⁵ Upon review, we concur with the director’s finding that the statements submitted by the petitioner and on his behalf and the documentary evidence are not sufficient to establish that he entered into his marriage in good faith.

The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). As discussed above, the testimonial evidence submitted in support of the petition contain little probative value in establishing the petitioner’s claim of a good faith marriage. The statements contain no specific details regarding their life together either prior to or after their marriage, shared events, trips, or other pertinent information. The only documentary evidence of shared possessions or assets consists of the lease for the apartment in Texas. The record does not contain any evidence of shared financial or bank accounts, health or life insurance, tax documentation or any other evidence pertinent to shared assets and liabilities. While there may be an explanation for the absence of such documentation, the petitioner has failed to describe whether there were any shared assets, utilities, or taxes, or provide any explanation for the lack of these documents. Accordingly, the petitioner has failed to establish that he entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

⁵ In her brief, the only issue presented by counsel is whether the petitioner established that he was subjected to extreme cruelty.

Beyond the decision of the director, the present record fails to establish that the petitioner resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. On the Form I-360, the petitioner indicated that he resided with his spouse from July 2003 until July 2005 and that he last resided with his spouse at [REDACTED]. As discussed above, the while the petitioner submitted a lease which indicates that he was a co-tenant for this apartment for a lease term beginning on January 20, 2005, the petitioner and his spouse did not sign the lease until June 10, 2005. Further, the petitioner submitted no information regarding his purported residence with his spouse in Columbus, Ohio and no documentary evidence such as a lease, utility bills, financial information, or correspondence to demonstrate a joint residence. Moreover, the statements submitted by the petitioner and on his behalf fail to discuss in any specific detail the petitioner's residence with his spouse in either Texas or Ohio.

Accordingly, we withdraw the director's affirmative finding in this regard. 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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.