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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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JUN 03 2009

FILE:

EAC 06 172 50404

Office: VERMONT SERVICE CENTER

Date:

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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 immigrant classification under 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 petitioner did not establish that he resided with his wife, that he married her in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a statement and a personal declaration, including a discussion of how he met his wife, their courtship, decision to marry, and their shared experiences. The petitioner also submits copies of the following: documentation related to the petitioner's divorce; the petitioner's temporary driving permit; a receipt from the Social Security Administration; additional photographs; and previously submitted documentation.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Specifically, if the petitioner had wanted his discussion of how he met his wife, their courtship, decision to marry, and their shared experiences to be considered, along with his temporary driving permit, receipt from the Social Security Administration, and additional photographs, he should have submitted the documents in response to the director's Notice of Intent to Deny (NOID). *Id.* However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

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, 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 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 . . . 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 filed 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.

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Trinidad and Tobago who was admitted into the United States on December 23, 2003 on a B1/B2 visa. On July 6, 2004, the petitioner married R-C¹, a U.S. citizen, in Fort Lauderdale, Florida. R-C- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Resident or Adjust Status, both of which were denied on June 23, 2006.

The petitioner filed the instant Form I-360 on May 15, 2006. On November 6, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residency, good-faith entry into the marriage and battery or extreme cruelty. The petitioner requested additional time to respond. On February 13, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite joint residency, good-faith entry into the marriage and battery or extreme cruelty. The petitioner did not respond to the NOID. On June 12, 2007, the director denied the petition on the three aforementioned grounds. The petitioner timely appealed.

Joint Residence

¹ Name withheld to protect individual's identity.

The record contains the following evidence relevant to the petitioner's claim that he resided with his wife:

- The petitioner's statements dated May 12, 2006 and January 2, 2007;
- A letter from [REDACTED], dated January 6, 2007, identifying himself/herself as a cousin and good friend of the petitioner and R-C-, and stating that the petitioner and R-C- reside at the "[REDACTED]" address in Lauderdale Lakes, Florida and that he/she lived with them temporarily and visited them on many occasions at the same address;
- A letter from [REDACTED], dated January 5, 2007, stating that he has known the petitioner and his wife for three years and that they are good people;
- The petitioner's Form G-325A, Biographic Information, on which he stated that he resided at [REDACTED] Pembroke Pines, Florida from February 2004 through February 2005, and at [REDACTED], Lauderdale Lakes, Florida, from February 2005 until he signed the form on May 12, 2005; and
- Comments, dated December 10, 2005, from the Broward County Sheriff's office related to the petitioner's 911 call, requesting a unit to stand by while obtaining his belongings from the "[REDACTED]." address.

On the Form I-360, the petitioner stated that he resided with his wife from May 2004 until December 2005. In his May 12, 2006 statement, the petitioner states that his wife did not return any documentation to him, such as utility receipts, bank statements, and medical insurance. In his January 2, 2007 statement, the petitioner states that, as he was unemployed and awaiting employment authorization, he was not included on the lease agreement, and that he and R-C- had planned on adding his name upon renewal of the lease. The petitioner also states that the utility bills were already under his wife's name and they did not **change them**. The petitioner states further that his sister, his cousin [REDACTED], and his friend [REDACTED] would be sending additional information to verify that he had resided with R-C-. It is noted that the record as it is presently constituted does not contain a notarized affidavit from the petitioner's sister concerning the issue of joint residence. In addition, as noted above, [REDACTED] states in his January 6, 2007 letter that the petitioner and R-C- both reside at the "[REDACTED]" address in Lauderdale Lakes, Florida and that he/she lived with them temporarily and visited them on many occasions at the same address. However, as of the January 6, 2007 date of that letter, the petitioner and R-C- reportedly had not resided together for more than a year. **The record contains no explanation for this inconsistency. In addition,** [REDACTED] indicates in his letter that he has known the petitioner and his wife for three years and that they are good people, but provides no relevant information concerning the issue of joint residence. While the petitioner is not required to have lived with his wife for any specific amount of time, these inconsistencies and deficiencies regarding the joint residence detract from the credibility of his testimony.

In regards to the 911 phone call, the record of the phone call from the Broward County Sheriff's office alone is insufficient to establish that the petitioner resided with R-C-. In addition, the petitioner has not resolved the inconsistencies and deficiencies regarding the issue of joint residence discussed above.

Accordingly, the petitioner has failed to establish that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

In sum, the relevant evidence provides intermittent documentation and contains unresolved inconsistencies and deficiencies regarding the petitioner's alleged residence with his wife. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In addition to the evidence listed in the preceding section, the record contains the following evidence relevant to his claim that he entered into the marriage in good faith:

- An undated letter from the Member Service Representative of the North Broward Hospital District Federal Credit Union, certifying that the petitioner and R-C- have a joint account with the same institution; and
- Wedding photographs.

In his May 12, 2006 statement, the petitioner provides no relevant information concerning this issue. In his January 2, 2007 statement, the petitioner states that he has no further "proof of [his] marriage" because the police informed him that he could only take the possessions that he could carry at that time. He states further that his stepdaughter later informed him that R-C- had disposed of his clothing and other possessions. The petitioner mentions that he had no health insurance, but does not describe how he met his wife, their courtship, decision to marry, their wedding or any of their shared experiences, apart from the alleged abuse.

In addition to the evidence listed in the preceding section, the record contains an undated letter from the Member Service Representative of the North Broward Hospital District Federal Credit Union, certifying that the petitioner and R-C- have a joint account with the same institution. As stated by the director in the February 13, 2007 NOID, the letter contains no information such as the date the joint account was opened or any other details concerning the use of the said account.

Information on the petition indicates that the petitioner and his wife lived together from May 2004 until December 10, 2005. However, as discussed in the preceding section, the record contains only scant joint documentation, such as the undated credit union letter containing no pertinent information indicating the date the account was opened and details concerning the use of the account. In addition, the wedding photographs confirm that the petitioner and R-C- were married, but these documents alone do not establish that the petitioner married his wife in good faith.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, as discussed above, the petition contains unresolved inconsistencies and deficiencies regarding the petitioner's alleged residence with his wife.

Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding how he met his wife, their courtship, decision to marry, wedding, and shared experiences, significantly detracts from the credibility of his claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty.

In his May 12, 2006 statement, the petitioner states that he endured physical and verbal abuse from his wife and that she was also unfaithful. The petitioner states that she yelled and swore at him and threatened him as well. The petitioner also states that she refused to attend the immigration interview in an attempt to control him.

In his January 2, 2007 statement, the petitioner states that the abuse from his wife started about 10 months into their marriage, and that at first he ignored the verbal abuse, but it grew worse. The petitioner explains that his wife embarrassed him in public places and in front of his stepchildren. The petitioner states that the petitioner hid his passport, birth certificate, school certificates, and diplomas, and that she began hitting him. The petitioner explains that his wife slapped him in the face several times, punched his arm, and "kicked and burnt" him. The petitioner states that when he turned off his cell phone, his wife held a knife to his chest, and that when he called 911, she hit him on the back with a chair. The petitioner explains that he never went to a doctor because he did not have health insurance, and that he did not call the police because she has four children and he did not want her to get arrested. The petitioner explains that he stayed in the marriage because he had grown fond of his stepchildren. The petitioner states that when his wife started having an affair, he could not tolerate any further abuse, and that his wife's hitting him with a chair prompted him to leave.

Neither of the affidavits submitted on the petitioner's behalf mentions any abuse of the petitioner by his wife even though one of the affiants, [REDACTED], claims to have resided with the petitioner and his wife temporarily and to have visited them on several occasions. In addition, the petitioner's friend, [REDACTED] states in his affidavit that he has known the petitioner's wife for three years and describes both of them as good people. **The record contains no explanation for these inconsistencies.**

The AAO acknowledges the December 10, 2005 comments from the Broward County Sheriff's office related to the petitioner's 911 call, requesting a unit to stand by while obtaining his belongings from the [REDACTED] address. The petitioner states in his May 12, 2006 statement that the Broward County Sheriff's office did not make a report. As discussed above, the record of the phone call from the Broward County Sheriff's office alone is insufficient to establish that the petitioner was abused by R-C-. Moreover, the petitioner has not resolved the inconsistencies and deficiencies discussed above.

In this case, we do not find the petitioner's evidence to be credible or sufficient to meet the petitioner's burden of proof. The petitioner's claims of alleged abuse lack probative detail. In addition, the affidavits from the petitioner's cousin, [REDACTED] who claims to have lived temporarily with the petitioner and his wife and visited them on several occasions, and from the petitioner's friend, [REDACTED]

who describes the petitioner's wife as a good person, provide no testimony regarding the alleged physical abuse by the petitioner's wife. These inconsistencies and deficiencies diminish the evidentiary value of the petitioner's testimony. The petitioner's allegation of extreme cruelty is based upon the claims that his spouse verbally abused him, called him names, embarrassed him in front of his family and publicly, and committed adultery. The petitioner also claimed that his wife threatened to have him deported. As described, the actions by the petitioner's wife do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner and the general and conflicting statements submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that his wife's non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner.

The relevant evidence fails to demonstrate that the petitioner's wife subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner's wife subjected him to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that he resided with his wife, that he entered into their marriage in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.