

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B9

FILE:

[REDACTED]
EAC 07 228 50338

Office: VERMONT SERVICE CENTER

Date: **APR 19 2010**

IN RE:

Petitioner: [REDACTED]

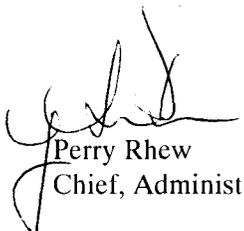
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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).


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO, dated September 14, 2009, will be affirmed and the petition will be denied.

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.

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:

(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.

* * *

(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.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated September 14, 2009, we will repeat only certain facts as necessary here. In this case, the petitioner is a native and citizen of Morocco who entered into the United States on January 27, 2007, as a K-1 nonimmigrant. On February 27, 2007, the petitioner married N-L¹, a U.S. citizen, in Orlando, Florida. The petitioner filed the instant petition on July 25, 2007.

On April 18, 2008, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residence, good moral character, and good-faith entry into the marriage. Regarding the issue of establishing a good-faith marriage, the director provided a list of acceptable documentation, including evidence of the petitioner's courtship, wedding ceremony, residences, and special events. In his July 11, 2008 response to the RFE, the petitioner submitted additional documentation, including affidavits from his two brothers claiming that the petitioner married N-L- in good faith. On December 17, 2008, the director denied the petition, finding that the petitioner submitted insufficient evidence to establish a good-faith marriage. On appeal, the AAO agreed with the director's determination that the evidence of record was insufficient to establish that the petitioner entered into the marriage in good faith.

On motion, counsel submits a brief. As supporting documentation, counsel submits: a new affidavit from the petitioner, dated October 5, 2009, regarding his "engagement marriage ceremony in Morocco" and his wedding ceremony in the United States; one new photograph; and copies of previously submitted documentation.

At the outset, it is noted that a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding. *See* 8 C.F.R. § 1003.23(b)(3). Here, the petitioner's additional photograph and his October 5, 2009 affidavit pertaining to his "engagement marriage ceremony in Morocco" and his wedding ceremony in the United States contain no evidence entailing new facts that were previously unavailable. Thus, this additional documentation will not be considered in this proceeding.

¹ Name withheld to protect individual's identity.

Good Faith Entry into Marriage

In its September 14, 2009 decision, the AAO found the evidence submitted by the petitioner and on the petitioner's behalf insufficient to establish the petitioner's good-faith entry into the marriage. The AAO found that the petitioner did not explain his feelings for marrying and repeatedly reconciling with N-L-, or describe their religious marriage ceremony in Morocco or their wedding in the United States. The AAO found that the lack of probative detail and substantive information in the petitioner's testimony and the supporting statements submitted on his behalf regarding his decision to marry, his wedding, and his relationship with N-L- apart from the abuse, significantly detracted from the credibility of his claim.

On motion, counsel asserts that the director and the AAO disregarded the most important parts of the petitioner's affidavit, which explain the petitioner's decision to marry N-L- after two years of courtship. Counsel reiterates much of the petitioner's testimony, asserting that the petitioner "has provided the AAO with abundant evidence regarding the bona fide nature of his relationship."

The AAO disagrees with counsel's assertions.

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). The petitioner, however, has submitted insufficient documentary evidence to support a finding that he entered into his marriage in good faith. The AAO acknowledges counsel's assertion on motion that the petitioner "chose to marry N-L- out of admiration for her ability to change from a life from past alcohol and drug use to a life of conservative and religious values." The AAO also acknowledges counsel's additional assertions: "A thorough analysis of his testimony, as done above, reveals that [the petitioner] provided more than sufficient details as to why he married and fell in love with N-L- after two years of courtship"; and "It is evident that mutual respect, goals, religious beliefs, and cultural backgrounds were factors in his attraction, both physical and emotional, to N-L- at the onset of their relationship." A review of the petitioner's testimony, however, fails to support counsel's assertions.

The petitioner states in his May 16, 2007 affidavit that, subsequent to his engagement to N-L- but prior to his arrival in the United States on a K-1 visa, he wanted to "divorce" N-L-, as she was "very jealous" and "very controlling," as she had accused him of infidelity, including having sexual relations with his sister. The petitioner also states that during the time period prior to his arrival to the United States to marry N-L-, N-L- had called him on the phone and told him of her fantasies and plans, which included watching "gay porn," taking revenge on him by "looking at me being like a slave" and buying sex toys and "invite some guys to our home when I'm with her so they have sex with me and she watch it." These descriptions of N-L- by the petitioner do not appear to support counsel's assertion on motion that the petitioner "chose to marry N-L- out of admiration for her ability to change from a life from past alcohol and drug use to a life of conservative and religious values." Nor do the petitioner's assertions of N-L- appear to support counsel's assertion on motion: "A thorough analysis of his testimony, as done above, reveals that [the petitioner] provided more than sufficient details as to why he married and fell in love with N-L- after two years of courtship." Prior to his coming to the United States to marry

N-L-, the petitioner knew of N-L-'s lifestyle, which included watching pornography, bondage and group sex, activities in which the petitioner stated emphatically in his testimony he would not participate. Thus, contrary to counsel's assertion on motion, the petitioner has not provided more than sufficient details as to why he married N-L-. Thus, the petitioner has not demonstrated that he entered into his marriage in good faith.

Counsel also asserts on motion that the AAO did not consider the totality of the evidence, including the petitioner's description of a typical day with N-L-, which included going to N-L-'s office and waiting for her to get off work and, on one occasion, going to the movies together. The petitioner, however, also described a "typical day" with N-L- as one that included N-L- insulting him and screaming at him and using "the 'F' word" against him and his brothers. Shortly thereafter the petitioner married N-L-. Again, the petitioner has not demonstrated that he entered into his marriage in good faith.

Counsel also asserts on motion that the AAO did not consider the affidavits submitted on the petitioner's behalf, from [REDACTED] and [REDACTED] which describe the petitioner and N-L- attending the mosque together on the weekends, visiting Arizona, and showing affection to one another. In her January 1, 2009, affidavit, [REDACTED] states, in part: "I know both of them, we when [sic] to the mosque together, with his wife along . . ." In his January 1, 2009 affidavit, [REDACTED] also states that, while in Morocco, the petitioner and N-L- "attended the prayers with us at the mosque." Neither of these affidavits provides any probative details of the petitioner and N-L-'s relationship. Instead, the affiants describe an activity in which they participated with the couple but do not comment on their relationship. In his January 1, 2009 affidavit, [REDACTED] states that, during the petitioner and N-L-'s trip to Arizona, he observed them "holding hands and seemed such a happy a couple [sic]." The petitioner, however, states in his own affidavit that during this same three-day trip to Arizona, his brothers accused N-L- of abusing the petitioner's mind and changing his personality and that his brothers told him "it's gonna be dangerous for me to go with her." Thus, regardless of [REDACTED] testimony, the petitioner in his own May 16, 2007 testimony does not describe himself and N-L- as a "happy couple" during this same time period. Again, it remains unclear why the petitioner entered into the marriage with N-L-. In his January 8, 2009, affidavit, [REDACTED] states, in part, that the petitioner enjoyed living in Florida. Again, this conflicts with the petitioner's own testimony. In view of the foregoing, the petitioner has not demonstrated that he entered into his marriage in good faith.

As discussed above, the record contains conflicting testimony and insufficient documentary evidence to support a finding that the petitioner entered into his marriage in good faith. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on his behalf also fails to support a finding that he entered into his marriage in good faith. Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Upon review of the record in its entirety, the petitioner has not demonstrated that he entered into his marriage in good faith. He is consequently ineligible for immigrant classification pursuant to section

204(a)(1)(A)(iii) of the Act and his petition must be denied.

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 previous decision of the AAO, dated September 14, 2009, will be affirmed and the petition will be denied.

ORDER: The decision of the AAO, dated September 14, 2009, is affirmed. The petition is denied.