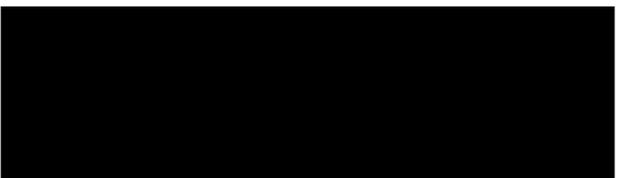


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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FILE:  Office: VERMONT SERVICE CENTER

Date:
DEC 07 2010

IN RE: 

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:

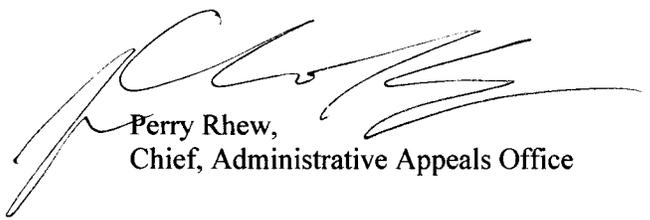


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 on the basis of his determination that the petitioner had failed to establish: (1) that his wife subjected him to battery or extreme cruelty during their marriage; and (2) that he married his wife in good faith. On appeal, counsel submits a letter reasserting the petitioner's eligibility, and additional evidence.

Applicable Law

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, the following:

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, the following:

- (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 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, the following:

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of the Dominican Republic, married S-S-¹ a citizen of the United States, on December 13, 2004. S-S- filed an alien relative visa petition, Form I-130, on the petitioner's behalf, which was denied and the petitioner was subsequently placed in removal proceedings.² The petitioner filed the instant Form I-360 on April 14, 2009. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on April 22, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition.

Battery or Extreme Cruelty

The first issue before the AAO on appeal is whether the petitioner has established that S-S- subjected him to battery or extreme cruelty during their marriage. In his February 9, 2009 declaration submitted at the time the petition was filed, the petitioner stated that in June 2008, S-S- began telling him she was bored with him, and told him that she would probably leave him at any point. He also stated that S-S- began angering easily at that time. According to the petitioner, S-S-'s "cruel treatment" caused him headaches and "stomach malaise." He stated that in September 2008, he came home from work one afternoon to find that S-S- had already packed her belongings, and she told him she was leaving him and moving to Boston.

In his March 23, 2010 declaration, the petitioner repeated his earlier assertions and added that S-S- began calling him "fatso" in June 2008; told him that she no longer wished to engage in sexual relations; and told him that she no longer loved him. The petitioner stated that he became so depressed he could no longer sleep and as a result received two warning letters from his employer, which he submitted, because he was distracted and falling asleep at work.

¹ Name withheld to protect individual's identity.

² The petitioner remains in proceedings before the Puerto Rico Immigration Court and his next hearing is scheduled for February 22, 2011.

In her March 18, 2010 letter, [REDACTED] stated that before S-S- argued with the petitioner “without cause,” from June 2008 until September 2008.

In his May 31, 2010 letter submitted on appeal, [REDACTED] stated that the petitioner told him that S-S- mocked and blackmailed him, and that he urged the petitioner to press charges against S-S-.

The record also contains two letters from [REDACTED], a clinical psychologist. In her March 17, 2010 letter, [REDACTED] stated that the petitioner told her that S-S- insulted his physical appearance and made “economic demands” on the petitioner. She also stated that S-S-’s abandonment of the petitioner caused anxiety, depression, and uneasiness. In her July 6, 2010 letter submitted on appeal, [REDACTED] stated that the petitioner told her that S-S- rejected his intimate advances; insulted him; and demanded money from him.

The AAO has reviewed the entire record and finds that when considered in the aggregate, the relevant evidence fails to establish that S-S- subjected the petitioner to battery or extreme cruelty during their marriage. First, the petitioner does not allege, and the record does not establish, that S-S- battered him. Nor does the record demonstrate that S-S-’s non-physical behavior constituted extreme cruelty. The petitioner has failed to establish that her behavior was comparable to the types of 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. Nor has the petitioner established that S-S-’s behavior was accompanied by other coercive actions or that her behavior was aimed at ensuring dominance or control over the petitioner. As noted by the Ninth Circuit Court of Appeals, “[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness.” *See Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

The petitioner has failed to establish that S-S- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The second issue before the AAO on appeal is whether the petitioner has established that he married S-S- in good faith. In his two declarations the petitioner stated that he fulfilled his marital obligations; and [REDACTED] all stated that the marriage between S-S- and the petitioner was “performed in good faith.” The record also contains a copy of an invitation to the couple’s wedding ceremony; a copy of an invoice for transportation of guests from the wedding ceremony; a copy of a residential lease signed by the petitioner; a rental agreement signed by S-S- and the petitioner for a used vehicle; a copy of a utility bill addressed to the petitioner; and a copy of a credit card offer addressed to S-S-.

The AAO has reviewed the entire record and finds that, in sum, the relevant testimonial and documentary evidence fails to establish that the petitioner married S-S- in good faith. The statements submitted by the petitioner and his affiants lack probative detail providing insight into the petitioner's intentions upon entering into the marriage: they provide no information regarding any shared experiences apart from the alleged abuse. The wedding invitation and transportation invoice are not evidence of the petitioner's intentions upon entering into the marriage. As the utility bill was issued to the petitioner alone, and the credit card offer was issued to S-S- alone, they are not evidence of any shared financial obligations, and the residential lease was not signed by S-S-. Nor does the rental agreement for the used vehicle establish that the petitioner married in good faith. The rental agreement is printed in Spanish and was submitted without the required, certified translation. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, we cannot determine whether it supports the petitioner's claim.

The petitioner has failed to establish that he entered into marriage with S-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's grounds for denial and has not established that S-S- subjected him to battery or extreme cruelty and that he married her in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.