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



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER Date:

NOV 09 2010

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)

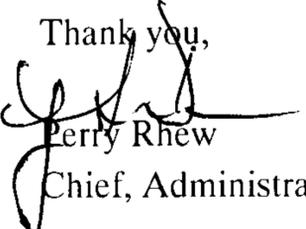
ON BEHALF OF PETITIONER:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed 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 Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

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.

On September 1, 2009, the director denied the petition, determining that the petitioner had not established: that he had resided with the claimed abusive United States citizen spouse; that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse; and that he had entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and documents in support of the 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 of Homeland Security].

The eligibility requirements are explained 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 under section 204(a)(1)(A)(iii) of the Act are further explained 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of St. Lucia. He entered the United States on or about July 16, 2004 as a [REDACTED] visitor. On September 28, 2007, the petitioner married [REDACTED], the claimed abusive United States citizen spouse. On August 12, 2008, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

Residence

On the Form I-360, the petitioner claimed that he resided with [REDACTED] from June 2007 to an unspecified date. The petitioner initially did not provide a statement or documents establishing that he resided with [REDACTED]. In response to the director's request for evidence (RFE), the petitioner provided his July 17, 2009 statement. The petitioner stated: "We got married on September 24, 2007 and moved into an apartment Jan 5th of 2008." The petitioner did not indicate when he no longer resided with [REDACTED]. The petitioner only references an event in August 2008 and notes that he was getting tired of [REDACTED] behavior so he moved in with a friend. The petitioner also provided affidavits from [REDACTED]. The affiants declared that the petitioner and [REDACTED] moved into an apartment at 172 Linden in January 2008. The record also included a bank statement addressed to the petitioner and [REDACTED] at an address on [REDACTED] that listed an opening balance as of September 2, 2008. The record further included utility bills addressed to [REDACTED] at [REDACTED] dated February 25, 2008, and March 2008.

On appeal, the petitioner provides a second personal statement dated September 16, 2009. The petitioner indicates that when the couple married, [REDACTED] was living at her mother's apartment at 150-160 Linden Street and that in January 2008, as their relationship was great they moved into an apartment at [REDACTED]. The petitioner noted that "[a]fter moving together in 2008," he and [REDACTED] asked to have him put on the utility statements but that the utility companies denied the request because he did not have a social security number. The petitioner explains that he was added to a bank account

¹ Name withheld to protect the individual's identity.

using his student identification which showed his old address. The petitioner submits a September 14, 2009 letter signed by a bank representative that lists the petitioner and an address on [REDACTED] and also lists the petitioner and [REDACTED]. The record on appeal also includes a Sprint bill dated September 23, 2008 that lists the petitioner and shows his address as 172 Linden Street. The petitioner also indicates that his wife agreed to take his last name but never did and when he asked her to change her name, she refused saying she did not have the time.

The petitioner's statements, the affidavits submitted on his behalf, and the utility bills with different addresses covering different time periods, are insufficient to establish that the petitioner resided with [REDACTED]. The petitioner does not provide consistent, probative testimony regarding his claimed joint residence(s) with [REDACTED] and does not provide other evidence to demonstrate that the couple established a joint residence. Upon review of the affidavits submitted on behalf of the petitioner, the affiants likewise do not include sufficient probative detail of their interactions with the couple at the couple's residence(s). The affiants do not describe the apartment(s) and do not provide consistent information regarding where the couple allegedly lived during their marriage. The utility bills and bank statements similarly do not provide the necessary consistent information to support the petitioner's claim that he established a joint residence with the petitioner at a particular location. The addresses on the bills and bank statements, as well as the dates of these documents, which include a time period when the petitioner had moved in with a friend, are also insufficient indicia of a joint residence. The petitioner has failed to establish that he resided with [REDACTED] as required to establish eligibility for this benefit.

Abuse

The petitioner initially did not provide a statement or other evidence establishing that he was subjected to battery or extreme cruelty perpetrated by [REDACTED]. In response to the director's RFE, the petitioner indicated: that he and [REDACTED] had a good relationship until she started working in March 2008; that her attitude towards him changed because he was not working; that on June 15 during an argument in which he wanted to know why he had to do favors for her friends, she threw a glass jug at him which hit him on his head; that on August 2, he and a couple of friends went to a party and when he returned home about 2:00 A.M., she had locked him out; and that when she returned from work the next day, she argued and "started breaking stuff." The petitioner indicated that he was tired of her getting angry and violent over every little issue. The petitioner noted that in the summer someone walked up to him and told him his wife was a freak and he was not doing a good job and that was when he decided he did not want to stay in the relationship and so moved in with his friend.

In an affidavit dated July 6, 2009 [REDACTED] declared that [REDACTED] neglected the petitioner in terms of her responsibilities as a wife. In a July 13, 2009 affidavit signed by [REDACTED] [REDACTED] declared: that he noticed a change in the petitioner's attitude after about eight months of marriage; that the petitioner always looked sad and down; that [REDACTED] could be mean and would try to make it look like a joke but that it was not a joke to the petitioner; and that he had never seen the petitioner break down like he did after the couple had a big argument and the petitioner came to his house with a gash on his head. In the July 17, 2009 affidavit of [REDACTED] declared:

that six months into the marriage, the petitioner was unhappy with the relationship; that he did not know about the abuse until he saw the petitioner with a scar on his head given to him by [REDACTED] and that the petitioner was “locked out of their joint apartment a couple of times for coming home after 12:00am [after] partying with [the affiant] and some of the guys.” On appeal, the petitioner provides a second affidavit signed by [REDACTED] and dated September 24, 2009. [REDACTED] adds to her previous statement that the petitioner came to her for advice on how to handle a “big argument which the couple had, in which he told [her] that [REDACTED] busted [his] head as a result [of the petitioner’s] spen[ding] time over at his friend’s house.”

Upon review of the record, the AAO concurs with the director’s determination regarding the petitioner’s failure to establish that he was subjected to battery or extreme cruelty perpetrated by [REDACTED]. Neither the petitioner’s initial statement nor the supplemental statement submitted on appeal provides the detailed, consistent, and probative evidence that establishes eligibility for this benefit. The petitioner referenced an argument on June 2 in which he stated he was injured by a glass jug thrown by [REDACTED] however, he does not provide the requisite details and circumstances of the alleged assault. The individuals who provided statements on his behalf do not indicate that they witnessed the incident. The petitioner does not provide further information regarding the alleged assault and whether he sought medical attention or reported the incident to the police. The record does not include sufficient probative evidence, including the petitioner’s personal testimony, to establish that he was subjected to battery by [REDACTED]. Although the petitioner referenced putting money into a joint account and his wife withdrawing all the money and referenced being locked out of the claimed joint residence when he came home late, the petitioner does not provide sufficient information regarding these events to establish that her actions constituted extreme cruelty as set out in the statute or regulation.

The petitioner’s general statement and the affidavits submitted on his behalf are not probative in establishing that he was subjected to battery or extreme cruelty by his spouse. The petitioner’s statement and the statements submitted on his behalf are not sufficiently detailed regarding the time of events and the circumstances of events. The AAO observes that the majority of the information in the affidavits, including the petitioner’s declaration, refer to arguments and do not denote specific incidents of abuse. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), 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. . . .” In this matter, the petitioner has failed to establish that [REDACTED] actions 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 AAO does not find that the petitioner’s statements or the statements of others submitted on his behalf demonstrate that he was the victim of any act or threatened act of physical violence or extreme cruelty or that [REDACTED] 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 record is simply insufficient in this regard.

When evaluating the record as a whole, the AAO finds the record lacks information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The record includes generic information with little chronological timelines, inconsistent and general statements, and lack of detailed instances of the claimed abuse. The AAO is aware of the difficulties of obtaining information to establish eligibility for this benefit; however, the petitioner must provide credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter, he has failed to do so. The petitioner in this matter has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by his spouse.

Good Faith Entry into Marriage

The petitioner has also failed to establish that he entered into the marriage in good faith. The petitioner's statements indicate generally that he met ██████ in 2005 "through a best friend, brother of hers" and that they began dating in November of 2005. The petitioner does not provide other information regarding his interactions with ██████ either prior to or during their marriage, other than as it relates to the claimed abuse. The petitioner's statements do not provide any specific information regarding his intent in entering into the marriage. A finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a bona fide marriage. In this matter, the petitioner provided only a cursory description of his introduction and interactions with his spouse prior to the marriage and during the marriage, other than as his interactions related to the alleged abuse. The petitioner's remaining, relevant testimony is general and insufficient to establish that he entered into the marriage in good faith.

The affidavits submitted on his behalf also fail to include information regarding the shared experiences of the couple. Although the affiants noted that the couple married, noted that the petitioner loved ██████, and some of the affiants indicated that they attended parties and visited the couple, the affiants do not provide the necessary information establishing the petitioner's intent in entering into the marriage. The lack of specific information, other than references to a few family gatherings, fails to demonstrate that the petitioner's intent was to enter into the marriage in good faith. Although the petitioner's mother-in-law and brother-in-law provided affidavits on the petitioner's behalf, the affiants do not provide the requisite detailed information that would assist in establishing the petitioner's intent in entering into the marriage. The affiants do not describe any particular incidents wherein they witnessed the alleged bona fides of the couple's marital relationship. The general statements submitted do not substantiate that the petitioner's intent upon marrying ██████ was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the intent of the petitioner upon entering into the marriage.

A wedding ceremony and photographs of the wedding couple do not establish the petitioner's intent in entering into the marriage. These documents, as well as the documents referenced above in the



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determination regarding the couple's claimed residence, are insufficient to establish that the petitioner intended to establish a life with D-S-. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on his behalf also fail to support a finding that he entered into the marriage in good faith. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with  in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings 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.