

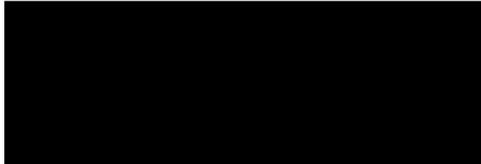
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B9

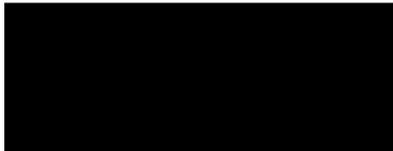
DATE: **MAY 23 2011**

Office: VERMONT SERVICE CENTER FILE: 

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, with a fee of \$630. 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

The petitioner seeks immigrant classification under 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.

The director determined that the petitioner had not established that he had jointly resided with a United States citizen, that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse, or that he had entered into the marriage in good faith. On appeal, counsel submits the petitioner's affidavit.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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 set forth 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.

Facts and Procedural History

The petitioner is a native and citizen of Jamaica. He last entered the United States in May 2004 on an H-2B visa with temporary authorization to remain in the United States to October 30, 2004. He married F-P-¹ the claimed abusive United States citizen on [REDACTED] 2007. In April 2007, F-P- 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 Residence or Adjust Status. On December 13, 2007, F-P- withdrew the Form I-130 filed on the petitioner's behalf. The Form I-485 was denied, also on December 13, 2007, and the petitioner was placed in removal proceedings before an immigration judge. On September 22, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On February 2, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had jointly resided with F-P-, that he had been subjected to battery or extreme cruelty perpetrated by F-P-, or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides the petitioner's affidavit. Counsel notes on the Form I-290B that a brief will be forwarded to the AAO within 30 days. To date, a supplemental brief has not been submitted and no further evidence has been provided. The record is considered complete.

Residence

The petitioner in this matter indicates on the Form I-360 that he jointly resided with F-P- from February 28, 2007 to June or July 2007. In the petitioner's July 1, 2009 affidavit, he indicated that F-P- moved into his and his sister's house after they were married. The petitioner initially submitted an August 1, 2009 affidavit signed by [REDACTED] a concerned neighbor, who indicated that she had visited the petitioner's home that he shared with his wife. In a July 7, 2009 affidavit signed by [REDACTED] declares that the petitioner and F-P- resided with her for a period of three years. In the petitioner's April 27, 2010 affidavit in response to the director's RFE, he declared that he lived with F-P- at his friend [REDACTED]'s house from February 28, 2007 to approximately July 2007.

¹ Name withheld to protect the individual's identity.

The director notified the petitioner in the RFE issued that the record included the petitioner's sworn statement dated December 13, 2007, declaring that he wished to withdraw his residence application "because [he and F-P-] are not living together she is a friend." In response to the director's request for clarification of this statement, the petitioner claimed that he had been coerced into writing and signing the statement because the immigration officer told him he had to write it or she would call the police. The petitioner explained that he had no idea why F-P- told the immigration officer lies but then adds that she told him that she also had been coerced into declaring that they were just friends. The petitioner also declared that the couple did not have documentary indicia of their marriage because F-P- had such poor credit he was unable to have her on his bank account or on the papers for purchasing a car and if they applied for any joint credit they were turned down because of her poor credit.

Based on the record, the director determined that the petitioner's statements did not overcome the inconsistencies in the record and thus the petitioner had not established a joint residence with F-P-.

On appeal, the petitioner reiterates that he was coerced into signing a statement withdrawing his residence application and adds that although he and F-P- were not living together on the day of the interview (December 13, 2007), the couple had resided together from February 28, 2007 to July 2007.

Upon review of the record, the petitioner has not provided a consistent probative account of his joint residence with F-P- during their marriage. In addition to the petitioner's sworn statement that the couple was not living together and that they were just friends, the record includes additional inconsistencies. The petitioner indicated that F-P- moved into his and his sister's house after they were married. [REDACTED] in her affidavit declares that the couple had resided with her for a period of three years, a statement inconsistent with the petitioner's declaration. Moreover, the petitioner does not provide detailed testimony regarding the layout of the claimed joint residence, the circumstances when F-P- allegedly moved in, the situation with the other individuals in the residence, or other information that would support his claim that F-P- jointly resided with him.

The AAO has reviewed the petitioner's statements and the statements of others and finds that the petitioner has not submitted sufficient credible and probative evidence to establish that he and F-P- resided together during their marriage.

Abuse

The petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by F-P-. The petitioner initially stated that when he purchased a new truck for his birthday (March 14) F-P- became angry when she learned that she could not be added onto the paperwork because of her poor credit. The petitioner noted that she criticized his cooking and insisted that they eat fast food, that she told him she was not getting anything out of the relationship, that she would throw things and curse at his sister and tell him that she was going to call immigration, and that she used bad language and exhibited disrespectful behavior in front of his friend's, [REDACTED] eight-year-old son. The petitioner indicated that F-P- regularly called him derogatory

names in front of others, that she bothered him at work, that she threatened to scratch and vandalize his car, and that she used his immigration status as a weapon. The petitioner noted that after four months of marriage she told him that nothing was going her way and moved out.

The petitioner also provided affidavits from several friends who indicated that F-P- called the petitioner names, argued with him in public, and embarrassed and disrespected him in public.

The record further included a January 29, 2009 evaluation prepared by [REDACTED] Ph.D. based on an assessment of the petitioner conducted on January 27, 2009 for an unspecified length of time. [REDACTED] noted that the petitioner's marriage to F-P- was his third marriage and provided a similar account of the petitioner's interactions with F-P- as the petitioner had provided. She indicated that the petitioner reported that F-P-'s behavior during their marriage left him emotionally drained. [REDACTED] indicated that the petitioner had described symptoms consistent with that of an individual who had experienced domestic abuse and recommended that the petitioner seek psychological services to address his symptoms. The petitioner explained in a response to the director's RFE that he had not been able to afford further psychological services but had sought support and solace from his men's group and pastor at his church.

The director determined that the petitioner had not provided evidence that he was the victim of battery or extreme cruelty as envisioned by Congress when enacting the Violence Against Women Act (VAWA). The director determined that the affidavits submitted on the petitioner's behalf failed to provide details or specifics concerning his relationship with F-P and that the evaluation submitted was insufficient to establish that he had been subjected to battery or extreme cruelty.

On appeal, the petitioner asserts that he has provided detail of specific incidents and that the affiants who submitted statements on his behalf provided a "good account of [F-P-'s] embarrassing and demeaning behavior toward [him] at [his] workplace and at church."

Upon review of the record, the petitioner has not described any particular incident in detail that constitutes battery and the embarrassing and demeaning actions of F-P- as he and the other affiants described do not constitute extreme cruelty under the statute and regulation. The petitioner has failed to establish that F-P-'s actions were 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 provided testimony sufficient to establish that F-P-'s behavior was part of an overall pattern of violence or coercion. 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)). In this matter, the petitioner's

testimony and the testimony of others on his behalf fails to establish that he was subjected to battery or extreme cruelty perpetrated by F-P-.

Upon review of [REDACTED] evaluation, the evaluation is based upon a single interview with the petitioner of unspecified length and, as such, fails to reflect the insight and elaboration commensurate with an established relationship with a mental health professional. We find the absence of an established relationship renders [REDACTED] findings speculative and diminishes the value of her evaluation. Moreover, [REDACTED] fails to provide examples of the causal relationship between specific abuse as set out in the statute and regulation and her diagnosis of the petitioner's major depression.

Based upon a review of the totality of the evidence in the record, the petitioner has not established that he was subjected to battery perpetrated by his spouse. Neither has the petitioner provided probative evidence that he was subjected to verbal or mental abuse or that F-P-'s conduct constituted extreme cruelty. The petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by F-P-.

Good Faith Entry Into Marriage

The petitioner provided a cursory description of his initial meeting and subsequent interactions with F-P-. The affidavits from friends, neighbors, and co-workers have been reviewed and although professing that the petitioner looked happy while dating F-P- and acknowledging that the petitioner and F-P- were together on several occasions, the affiants do not provide further details of the petitioner's intent when marrying F-P-. The affiants do not describe any particular and specific incidents where they witnessed the alleged bona fides of the couple's marital relationship.

Upon review, the petitioner does not provide probative testimony regarding his courtship with F-P- or his interactions with F-P- except as it relates to the claim of abuse. He does not describe the couple's mutual interests in detail, he does not describe her family, he does not detail the couple's daily routines, and he fails to provide any probative information for the record that assists in determining his intent when entering into the marriage. The key factor in determining whether a petitioner 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 the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). Simply stating that he married F-P- for love is insufficient to establish his good faith intent in entering into the marriage. Moreover, the petitioner's sworn statement when withdrawing his Form I-485, that he and F-P- were just friends, has not been overcome by his subsequent statements. The petitioner's inconsistent statements do not provide the necessary probative credible evidence to establish that he intended to establish a life together with F-P-. Upon review, the record in this matter does not include sufficient probative evidence establishing that the petitioner entered into marriage with F-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

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. The petition remains denied.