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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



B9

DATE: **FEB 28 2012**

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:

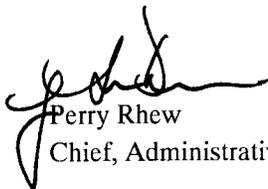
SELF-REPRESENTED

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. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal and affirmed its decision when determining the petitioner's motion to reopen. The matter is now before the AAO on a second motion to reopen. The motion to reopen will be granted. The AAO's previous decision will be affirmed and the petition will remain 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.

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 citizen of Nepal who entered the United States as an F-1 nonimmigrant student on August 22, 1997. He married [REDACTED]¹ the claimed abusive United States citizen, on [REDACTED]. He filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on December 15, 2009. The director denied the petition on April 26, 2010, after determining that the petitioner had failed to establish that he had jointly resided with the United States citizen spouse, he had been subjected to battery and/or extreme cruelty by his United States citizen spouse, or that he had entered into the marriage in good faith. The petitioner's former counsel timely submitted a Form I-290B, Notice of Appeal or Motion, a brief and additional evidence. Upon review, the AAO dismissed the appeal, concurring with the director's decision. Former counsel then submitted a Form I-290B, checking the box indicating that he was filing a motion to reopen and a motion to reconsider the matter and submitted the petitioner's April 4, 2011 statement. Former counsel asserted that the petitioner's personal statement provided clarification of perceived inconsistencies and additional information. Upon review of the petitioner's statement, the AAO determined: the petitioner had not provided probative information regarding his claimed joint residence with the United States citizen spouse; the petitioner had not provided probative testimony establishing that he had been subjected to battery or extreme cruelty as that term is defined in the statute and regulation; or the petitioner had provided probative detail providing insight into the petitioner's intentions upon entering into the marriage. On the instant motion now before the AAO, the petitioner provides a September 12, 2011 personal statement, photographs of the areas he claims that he and [REDACTED] used to hang out together, and previously submitted documentation.

Joint Residence

On this second motion, the petitioner does not add further probative testimony describing his claimed joint residences with [REDACTED] and the photographs submitted do not provide information regarding the claimed joint residences. Upon review of the petitioner's statement on motion, the petitioner does not expand upon the nature of the residences where he claims he lived with his former spouse. The record does not include sufficient consistent and probative testimony to establish that the petitioner jointly resided with [REDACTED] during the marriage.

Battery or Extreme Cruelty

The AAO previously discussed and set out the deficiencies of the statements submitted by the petitioner and on his behalf. The petitioner does not claim and the record does not reveal that the petitioner was subjected to battery. The petitioner, on this second motion, reiterates that [REDACTED] was

¹ Name withheld to protect the individual's identity.

² The petitioner states that the couple divorced on May 14, 2010.

a money-minded person, she called him names, and that she was unfaithful which resulted in two children by other men during their marriage. Although the petitioner states that his former spouse threatened him with calling immigration officials, he does not provide probative testimony detailing specific threats and the circumstances of the claimed threats. The petitioner does not provide testimonial or other evidence on motion detailing specific events that include extremely cruel behavior or conduct comparable to the conduct set out in the definition of extreme cruelty in the statute and regulation. The record on motion does not include further testimony or evidence establishing that the petitioner was subjected to behavior perpetrated by his former spouse that constitutes extreme cruelty as set out in the statute and regulation.

Good Faith Entry into Marriage

The AAO discussed the deficiencies in the petitioner's testimony and the documentary evidence submitted by the petitioner to establish that he entered into the marriage in good faith. As noted in our prior decision, the petitioner failed to provide probative testimony regarding his introduction to [REDACTED], their courtship, decision to marry, and shared experiences. In his statement in support of the instant motion, the petitioner states that the couple was madly in love when they married and he reiterates that he did not marry his former spouse for immigration purposes. Upon review of the petitioner's testimony on motion, his testimony continues to lack probative detail providing insight into his intentions when entering into the marriage. General statements are insufficient to establish intent in this regard. The petitioner again provides little information regarding his interactions with his former spouse regarding their courtship, wedding ceremony, shared residence and experiences. The petitioner's testimonial evidence on motion fails 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 his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

Upon review of the petitioner's testimony on motion, the petitioner has not provided testimony sufficient to establish that he jointly resided with the claimed abusive spouse, that he was subjected to battery or extreme cruelty perpetrated by his former spouse, or that he entered into the marriage in good faith. The petitioner has not provided additional testimony sufficient to overcome the AAO's prior decision. 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 motion is granted. The AAO's March 7, 2011 and August 16, 2011 decisions are affirmed and the petition remains denied.