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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

[REDACTED]

Date: **MAY 30 2013**

Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Self-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:

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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain 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 denied the petition on the basis of his determination that the petitioner had failed to establish joint residence, that he entered into his marriage in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, the petitioner submits additional affidavits.

Relevant 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, 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 further 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:

(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 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.

* * *

(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 Jamaica who last entered the United States on July 19, 2008, as a nonimmigrant visitor. The petitioner married a U.S. citizen on July 23, 2009, in Texas. The petitioner filed the instant Form I-360 on November 2, 2010. The director subsequently issued a request for additional evidence (RFE) of, among other things, the petitioner's joint residence, entry into his marriage in good faith, and his wife's battery or extreme cruelty. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty, joint residence, or good faith entry into the marriage.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. On appeal, the petitioner has established that he married his wife in good faith and that he resided with her during their marriage. However, he has failed to establish that he was subjected to battery or extreme cruelty by his wife during their marriage. A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Entry into the Marriage in Good Faith and Joint Residence

The director determined that the petitioner's evidence was insufficient to support a finding of his good-faith entry into the marriage. The petitioner initially submitted affidavits from [REDACTED] and [REDACTED] who briefly stated that the petitioner was married but did not provide any information that indicated that the petitioner married his wife in good faith or that they resided together. The director correctly determined that the letters contained no probative information regarding the petitioner's intentions in marrying his spouse as they did not describe the petitioner's intentions or interactions with his wife in probative detail, nor did they indicate that the petitioner and his wife shared a joint residence.

On appeal, the petitioner submits an affidavit in which he explains how he first met his wife. He states that they began dating and then kept in touch over the phone until he moved to Texas to marry her. The

petitioner describes various shared experiences and their life together after their wedding. He discusses their joint residence and their daily activities and routines in probative detail. The petitioner explains that he does not have evidence such as joint account information or tax forms to submit as evidence because initially he did not have a social security number or work authorization, and later his wife refused to put his name on accounts as a way to control him. The petitioner also submits an affidavit from [REDACTED] who spent time with the petitioner and his wife while they were married, and who explained the basis for her personal knowledge of the petitioner's marital relationship. The affiant discussed in detail her interactions with the petitioner and his wife, and her observations of the petitioner and his wife's interactions with and feelings for each other during their marriage. [REDACTED] also notes that she visited the petitioner and his wife's joint residence on various occasions.

De novo review of the record establishes that the petitioner married his spouse in good faith and that they resided together. When viewed in the totality, the preponderance of the relevant evidence submitted demonstrates that the petitioner entered into marriage with his wife in good faith and established a joint residence with her, as required by sections 204(a)(1)(A)(iii)(I)(aa) and (II)(dd) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the petitioner's evidence on appeal fails to overcome this ground for denial. The petitioner submitted affidavits from [REDACTED] stated that the petitioner met his wife and married her. She indicated that the petitioner was upset after his wife's immigrant petition on his behalf was denied, and that his wife later kicked him out of the house. [REDACTED] stated that the petitioner was married and that there were problems with the marriage. The petitioner's friends' brief affidavits lack probative details, and do not describe any behavior that involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, the petitioner submits an affidavit dated March 1, 2012. The petitioner reports that his wife acted jealous, used profane language, called him names, threatened him, screamed at him and threw tantrums. The petitioner also generally states that his wife would smash and throw things and hit him. He describes one occasion on which his wife left him at a park so that he was without a ride home. The petitioner indicated that on one occasion when he came home in the middle of the night he discovered that his wife had changed the locks to their home. The petitioner does not describe any behavior that involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, and his brief and general statements that his wife hit him are insufficient to establish that his wife battered him.

The petitioner also submits two affidavits from [REDACTED] Neither of these affidavits provides any probative information regarding any battery or extreme cruelty the petitioner's wife allegedly subjected him to. [REDACTED] recalls that she realized that the petitioner and his wife

were having problems and that the petitioner's wife "put him out" and on one occasion yelled disrespectful words at him and pushed him in the chest. The petitioner himself, however, does not indicate that his wife ever pushed him or discuss this incident. [REDACTED] states that the petitioner told him there were problems in his marriage and that he caught his wife cheating. Neither [REDACTED] nor [REDACTED] provide any probative details of behavior that would constitute extreme cruelty or battery.

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The petitioner's brief assertions that his wife hit him and [REDACTED] assertion that she pushed him are not sufficient evidence of battery as their descriptions lack probative details, and the petitioner does not allege that his wife ever pushed him. The relevant evidence also does not demonstrate that the behavior of the petitioner's wife constituted extreme cruelty. In his affidavit, the petitioner recounted that he and his wife argued, and that she called him names and threatened him. The petitioner's friends briefly state that the petitioner and his wife had problems, but they do not discuss any specific incident of battery or extreme cruelty that they witnessed in probative detail. The petitioner's statements and other relevant evidence are insufficient to demonstrate that his wife subjected him to actual or threatened violence, psychological abuse or other forms of extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage. In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.