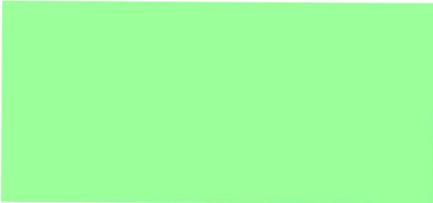


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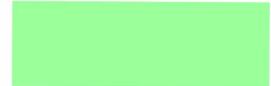
U.S. Citizenship
and Immigration
Services



Date: DEC 05 2014

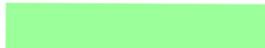
Office: VERMONT SERVICE CENTER

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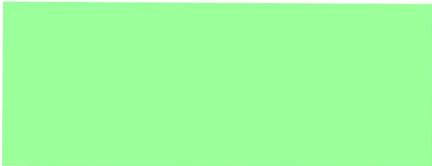
IN RE:

Self-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)

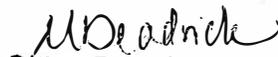
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 The director’s decision shall be withdrawn and the matter remanded for entry of a new decision.

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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith. On appeal, counsel submits a brief and additional evidence. We review these proceedings *de novo*. A full review of the record as supplemented on appeal demonstrates that the petitioner has overcome the director’s sole ground for denial. Because the petitioner remains ineligible on another ground, the matter will be remanded to the director for further action.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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.

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:

(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:

(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 is a citizen of Nigeria who entered the United States on June 30, 2010 as a visitor for business. The petitioner married S-T-, a U.S. citizen, on December [REDACTED] in Texas.¹ The petitioner filed the instant Form I-360 on January 30, 2012. The director subsequently issued a

¹ Name withheld to protect the individual's identity.

Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence. The director denied the petition and counsel timely appealed.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal demonstrates the petitioner's entry into his marriage in good faith. In his initial affidavit, the petitioner discussed in probative detail how he first met his wife and their courtship, engagement, wedding and joint residence. In response to the RFE, the petitioner explained that because he and his wife resided with his cousin and he was unemployed, he does not have a residential lease, joint tax returns or a bank account.

The petitioner also submitted below affidavits from his cousin, [REDACTED], and his neighbor, [REDACTED] explained in her two statements that the petitioner and his wife resided with her and she provided a probative account of her interactions with the couple during their courtship and marriage. [REDACTED] stated that he lived near the petitioner and his wife and frequently saw the couple together in their neighborhood. In addition, the petitioner submitted photographs of himself and his wife at their wedding ceremony, a restaurant and other unspecified locations and electronic mail correspondence he received congratulating him on his marriage.

In denying the petition, the director stated that the photographs the petitioner submitted of his wedding fail to show all of the guests he claimed attended the ceremony and the photograph of his wedding proposal is at a location that differs from his account in his affidavit. On appeal, regarding the discrepancies noted by the director, the petitioner states that he proposed to his wife at a seafood restaurant and then proposed to her again at his cousin's office so that it could be captured on camera. The petitioner further explains that he does not have photographs of all the guests who attended his wedding ceremony because the courthouse ceremony was delayed and the guests had to return to work. The petitioner has provided a reasonable and credible explanation of the discrepancies in his evidence. In addition, the petitioner reiterates that because he and his wife lived together for only three months and he was unemployed, he does not have joint tax returns or a residential lease.

On appeal, the petitioner also submits additional photographs of himself and his wife, including photographs taken on their wedding day. In addition, the petitioner submits affidavits from his spouse and his friend, [REDACTED]. The petitioner's spouse describes her courtship and joint residence with the petitioner in probative detail. [REDACTED], a witness to the petitioner's marriage, provides detailed testimony of his social interactions with the couple and his observations of their marital relationship.

When viewed in the aggregate, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

On appeal, the petitioner has overcome the director's sole ground for denial. However, as the record is presently constituted, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because it does not establish that his wife subjected him to battery or extreme cruelty. In his initial affidavit, the petitioner stated on December 31, 2010 he and his wife attended a party and she became upset when he was dancing with another woman. He recounted that his wife pulled on his shirt to leave the party and when they went outside she started to cry. The petitioner recounted that on another occasion his wife became upset when he suggested that they postpone plans to see her children from another relationship. He recounted that in January 2011 his wife became upset after he helped a woman in a parking lot with her child. The petitioner stated that his wife temporarily moved back to her mother's house where her children were residing. He stated that when his wife returned to live with him she was upset because he was unemployed and she broke a lamp. The petitioner explained that his wife did not file an immigration petition on his behalf prior to their separation. In response to the RFE, the petitioner stated that he has suffered from "emotional and mental damage" as a result of his separation from his wife. The petitioner's statements do not indicate that his wife ever battered him or that her behavior 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).

stated in her first affidavit that she witnessed the petitioner and his wife arguing and she saw the petitioner's wife break a lamp. She did not discuss the alleged abuse in her second affidavit. The petitioner's friend, stated that the petitioner told him that his wife accused him of infidelity and abandoned him. His friend, stated that she witnessed the petitioner and his wife in an argument during the party on December 31, 2010. These statements do not indicate that the petitioner's wife ever battered him or that her behavior constituted extreme cruelty, as that term is defined in the regulation.

In response to the RFE, counsel asserted that the evidence submitted below demonstrates a "pattern of abuse, control, violence, isolation and degradation that is a part of an overall pattern of violence." The petitioner in his statement discusses his wife's accusations of infidelity, their arguments over finances, and her separation from him after the breakdown of their marriage. He has not demonstrated that this behavior was accompanied by coercive actions or threats of harm, or that her actions were aimed at ensuring dominance or control over him. The petitioner has not established that he was subjected to economic coercion, psychological attacks, degradation and humiliation, or other behavior that is comparable to the types of acts described in the regulation 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

The matter is remanded to the director so that she may request the appropriate evidence relating to battery or extreme cruelty during the petitioner's marriage and enter a new decision into the record.

As always 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.