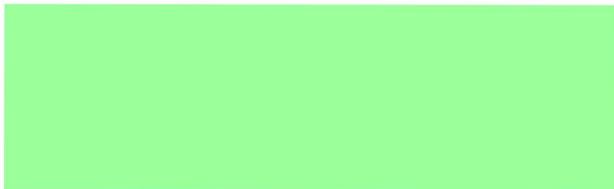


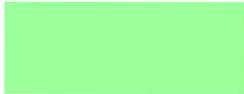
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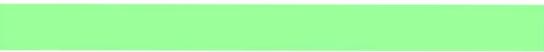
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **DEC 10 2014** Office: VERMONT SERVICE CENTER FILE: 

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

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 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 spouse.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits a letter and additional evidence.

Applicable Law

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, 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:

(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 or

the self-petitioner's child, 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.

Facts and Procedural History

The petitioner is a citizen of Jamaica who entered the United States on June 25, 2000, as a B2 nonimmigrant visitor. The petitioner married his U.S. citizen wife on November [REDACTED], in New York. The petitioner filed the instant Form I-360 self-petition on June 4, 2012. The director

subsequently issued requests for additional evidence (RFE) of, among other things, the petitioner's wife's battery or extreme cruelty and the petitioner's entry into the marriage in good faith. The director found the petitioner's responses to the RFEs insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty. On appeal, counsel submits a letter in which he asserts that the petitioner submitted sufficient evidence to show that he was abused and a letter from the petitioner's wife to the petitioner.

We review these proceedings *de novo*. On appeal, the petitioner has failed to establish that he was subjected to battery or extreme cruelty by his wife during their marriage. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial. Furthermore, the director's finding that the petitioner established that he entered the marriage in good faith will be withdrawn. A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Battery or Extreme Cruelty

The director did not err in determining that the petitioner failed to establish that his wife subjected him to battery or extreme cruelty. The petitioner did not provide an affidavit or in any way describe any battery or behavior comparable to the acts described as extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted a statement from [REDACTED] who indicated that the petitioner's wife was not "the most welcoming person" and that the petitioner had told her that his wife "tends to get aggressive." Ms. [REDACTED] did not provide any probative descriptions of any particular incident of battery or extreme cruelty nor did she indicate that she believed the petitioner to be a victim of any type of abuse. On appeal, the petitioner submits a letter from his wife in which she states that she hurt him with words, lashed out physically, and embarrassed him in front of his friends and family. The petitioner's wife does not offer any probative descriptions of any particular incidents of battery or acts comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), and there is no indication in the record that the petitioner's wife's behavior involved any coercive actions, threats of harm, or was otherwise part of an overall pattern of violence.

On appeal, counsel contends that the petitioner's wife's letter "details both battery and extreme cruelty" and that her admission provides evidence that the petitioner was abused. However, as explained above, the petitioner's wife's statement does not provide any details of any incidents of battery or extreme cruelty. The relevant evidence does not show that the petitioner's wife's behavior involved battery or psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also did not describe any behavior or establish that any other acts were part of an overall pattern of violence. *Id.* Accordingly, the petitioner has not established by a preponderance of the evidence 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.

Entry into the Marriage in Good Faith

Beyond the decision of the director,¹ the record fails to demonstrate the petitioner's entry into his marriage in good faith. The petitioner did not submit an affidavit. In response to an RFE, the petitioner submitted an e-mailed statement in which he stated generally that he married his wife because he fell in love with her and that he married her in good faith. The petitioner did not describe how he met his wife, their courtship, engagement, wedding, joint residence or any of their shared experiences.

The petitioner also submitted affidavits from friends and family members. Ms. [REDACTED] indicated that the petitioner was married and that she and her husband tried to give him marital advice. She also stated that when the petitioner was married, he was extremely happy. [REDACTED] recounted that he is close to the couple and visited their home a few times for counseling and prayer. He also indicated that he still sees the couple attending church together on Sundays, however, the letter was written in July, [REDACTED] and the petitioner claims that he separated from his wife in April of 2012. [REDACTED] the petitioner's sister-in-law, stated that she has witnessed their growth as a couple and sees the foundation for a strong family. None of these affiants probatively described the petitioner's intentions in entering the marriage or provided any substantive information regarding their observations of the petitioner's interactions and relationship with his wife prior to and during their marriage. [REDACTED] the petitioner's sister, stated that the petitioner told her he was getting married, and that she met the petitioner's wife and spent time with her at the beauty salon, with the kids at the park, and shopping. She also indicated that the petitioner looks happy when they are laughing, talking, kissing and hugging each other, and that he told her that he is in love with his wife and talks to her about the future plans he has for them. Although the petitioner's sister provided some information about the petitioner and his wife's relationship, her affidavit, as well as the other affidavits submitted, were all written in 2013, after the petitioner and his wife separated, yet they make no mention of the separation.

The petitioner also submitted [REDACTED] bills, copies of bank statements from a joint [REDACTED] account, letters from [REDACTED] and deposit slips addressed to both he and his wife. However, although there is a single letter from [REDACTED] regarding insufficient funds dated prior to April 2012, all of the remaining documents are dated after the petitioner claimed he and his wife separated and were no longer living together. The photographs of the petitioner with his wife on three unspecified occasions are not accompanied by any explanation of their significance. On appeal, the petitioner submits no new evidence. This evidence, without probative testimony, is insufficient to establish the petitioner's intentions upon entering into the marriage. The petitioner does not describe meeting his wife, their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. The affidavits from friends and family indicate that the petitioner was married, but do not probatively

¹ A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

describe the petitioner's intentions in entering into the marriage or their observations of the petitioner's relationship with his wife. When viewed in the aggregate, the relevant evidence does not demonstrate, by a preponderance of the evidence, 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.

Conclusion

On appeal, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage. Beyond the director's decision, the petitioner also has not established the requisite entry into the marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.