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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: **MAY 22 2014**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: 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:

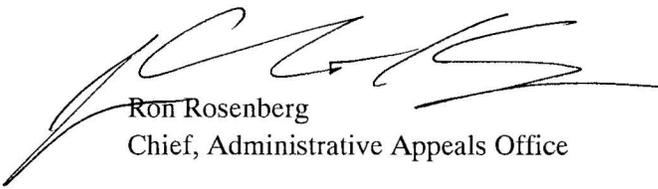
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 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.

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; his wife subjected him to battery or extreme cruelty during their marriage; and he is a person of good moral character.

On appeal, the petitioner submits a brief and additional evidence.

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:

(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.

* * *

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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 Ghana who entered the United States on June 14, 2009 as a J-1 exchange visitor. The petitioner married a U.S. citizen on August 23, 2010 in the Bronx, New York. The petitioner filed the instant Form I-360 on January 30, 2012. The director subsequently issued Requests for Evidence (RFEs) of the petitioner's good-faith entry into the marriage, the requisite battery or extreme cruelty, and his good moral character. The petitioner responded to the first RFE but not the second and the director denied the petition. The petitioner filed a timely appeal.

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. The appeal does not overcome all of the director's grounds for denial and it will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his first affidavit, the petitioner recounted that he first met and dated his wife when she visited Ghana in 2006, but lost contact after she returned to the United States. He stated that they reconnected at a party in the Bronx, New York in June 2010. The petitioner recounted that he and his wife dated and after a couple of months they lived together. He stated that they wed in a courthouse on August 23, 2010. The petitioner's affidavit lacks credible, probative details of his courtship with his wife, their wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner submitted letters from his friends, [REDACTED] and [REDACTED], his uncle, [REDACTED], his roommates, [REDACTED] and [REDACTED] and his landlord, [REDACTED]. The petitioner's friends attested to knowing the petitioner and his wife as a married couple, but they did not provide detailed information establishing their personal knowledge of the relationship. The petitioner's uncle stated that he met the petitioner's wife prior to the couple's marriage and he believed they would "find happiness." However, the remainder of his statement focuses on the alleged abuse and provides no probative details on the petitioner's good faith entry into the marriage. The petitioner's roommates stated that they resided with the petitioner and his wife, but their letters also focus only on the alleged abuse. The petitioner's landlord claimed to have rented the apartment to the petitioner and his wife. He did not indicate that he had any personal knowledge of their relationship. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married his wife in good faith.

The director also accurately assessed the relevant documents submitted below. The petitioner submitted copies of: electronic mail correspondence between the couple; three photographs of the couple; the couple's bank account statements and debit cards; a cellular phone statement; and a copy of an electronic instant message conversation between the couple. The debit cards and bank account statements show that the couple had a joint bank account during their marriage. However, the remaining documents are of little probative value in establishing the petitioner's good faith entry into the marriage. The three photographs are undated and are taken at unspecified locations. The owner of the cellular telephone service is not identified on the statement. The electronic messages between the petitioner and his wife are all dated after the couple's August 2011 separation.

On appeal, the petitioner submits statements from [REDACTED], an executive assistant at his mosque, [REDACTED] his mother-in-law, [REDACTED] his friends, [REDACTED] and [REDACTED] his father, [REDACTED] and his mother, [REDACTED]. He submitted a bank statement reflecting that the couple's joint account was closed on April 19, 2012 and the petitioner's debit card was closed on May 12, 2012. He also submitted additional undated photographs of himself with his wife taken at the courthouse during their wedding and on other, unidentified locations.

The petitioner's mother-in-law, [REDACTED] recounted that the petitioner and his wife resided with her from August 2010 until March 2011. She stated that she "endorsed" the marriage and the petitioner financially supported her and his wife. However, she failed to provide any probative details of her observations of the petitioner's interactions with or feelings for his wife during the couple's eight months of residing with her. [REDACTED] of [REDACTED] stated that the petitioner and his wife had been "witnessed" to have attended gatherings at the mosque. He stated that the couple's marriage was "authenticated religiously" at another mosque named [REDACTED] in 2010. The petitioner, however, does not mention having a religious marriage ceremony in his affidavit. Moreover, Mr. [REDACTED]'s statement fails to show that he has personal knowledge of the relationship. In his second affidavit, [REDACTED] reiterated that he attended the petitioner's wedding ceremony at the courthouse. Although he stated that he visited the couple on "several occasions" and they "had a lovely relationship," he did not provide any information on his visits to the couple's residence or other social occasions with the couple. The remaining affidavits from the petitioner's parents, [REDACTED] and [REDACTED], and his friends, [REDACTED] and [REDACTED] are also of little probative value. All of the affiants claim to have knowledge of the petitioner's marriage to his wife, but they were residing in Ghana during the period of the petitioner's courtship and marriage.

On appeal, the petitioner asserts that based on the evidence submitted below and on appeal he has established that he entered the marriage in good faith. A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. The relevant documents show that the petitioner and his wife held a joint bank account during and after their separation, and were photographed together at their courthouse wedding and other, unspecified occasions. The petitioner's affidavit lacks probative details on his courtship with his wife, their wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse. None of the petitioner's friends or family members discusses in probative detail their observations of the petitioner's interactions

with or feelings for his wife during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate that he 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

The record also fails to establish that the petitioner's wife subjected him to battery or extreme cruelty. The petitioner recounted in his affidavit that several months after their marriage he learned that his wife has a short temper and mood swings. He stated that his wife called him names, threatened to have him deported, physically assaulted him, and forced him to be sexually intimate with her. The petitioner stated that his wife did not want to work and he worked additional hours to support her and his two children who resided abroad. He recounted that before they separated he learned that his wife was having an extramarital affair and was pregnant, but he does not know if he is the father of the child. The petitioner's brief descriptions of the alleged abuse fail to contain probative, credible details to establish that he was subjected to battery or extreme cruelty.

The letters from the petitioner's friends, [REDACTED] and [REDACTED] his uncle, [REDACTED] and his roommates, [REDACTED] and [REDACTED] also fail to demonstrate abuse in the petitioner's marriage. The petitioner's friend, Mr. [REDACTED], stated that he was present at the wedding ceremony, but does not indicate that he has knowledge of the alleged abuse. Mr. [REDACTED] briefly recounted in a one-sentence statement that the petitioner told him that he was being disrespected and "verbally abused" by his wife. His statement offers no details of the alleged abuse. The petitioner's uncle, Mr. [REDACTED] also briefly recounted that the petitioner told him about abuse in the marriage, but he does not offer any details. The petitioner's roommates, [REDACTED] and [REDACTED] state that they witnessed the petitioner's wife verbally and physically abuse him. However, they do not discuss in probative detail any specific incidents of abuse that they witnessed during their five-month period of residing with the couple.

The affidavits and letters submitted on appeal similarly fail to meet the petitioner's burden of proof. [REDACTED] executive assistant at the petitioner's mosque, [REDACTED] stated that the petitioner and his wife had "marital discord" and "marital conflict" during their marriage and separated because of irreconcilable differences. These statements do not demonstrate abuse in the petitioner's marriage. The petitioner's friend, [REDACTED] also did not speak of the alleged abuse in his affidavit.

The petitioner's friend, [REDACTED] stated that the petitioner was in a "disgraceful situation" because his wife was unfaithful and the petitioner's mother-in-law, [REDACTED] stated that she witnessed the petitioner's wife yelling at the petitioner. These incidents do not indicate that the petitioner's wife 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).

The petitioner's father, [REDACTED] and his mother, [REDACTED] stated that the petitioner called them in Ghana after his marriage and informed them that his wife "has been maltreating and giving him hard times." The petitioner's friend, [REDACTED] who also resides in Ghana, similarly stated that the petitioner informed him after his marriage about "hard times and

abuses” from his wife. These statements fail to provide detailed information on the affiants’ knowledge of the alleged abuse. Moreover, the affiants’ assertion that that the petitioner informed them of the alleged abuse is in conflict with the petitioner’s claim in his affidavit that he only discussed the alleged abuse with his uncle and he did not tell anyone else because he was ashamed.

On appeal, the petitioner asserts that the evidence shows that he was subjected to extreme cruelty. A full review of the evidence fails to demonstrate that the petitioner was subjected to battery or extreme cruelty during his marriage. The electronic messages between the petitioner and his wife are all dated after the couple’s separation and do not show battery or extreme cruelty, as that term is defined in the regulation. In his affidavit the petitioner failed to provide detailed, probative testimony of the alleged abuse. Moreover, the petitioner’s statement that with the exception of his uncle, he did not tell his family members and friends in this country and abroad of the abuse is inconsistent with the third-party affidavits in which the affiants claim that the petitioner contacted them and informed them of the alleged abuse. The statements from the petitioner’s other friends, including his roommates with whom he and his wife resided for five months, fail to provide credible, probative details of the alleged abuse. Accordingly, the preponderance of the evidence does not establish that his wife subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner’s good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in January 2009 and ending in January 2012).

As evidence of his good-moral character, the petitioner initially submitted a City of New York police clearance, based upon a fingerprint search, showing no criminal record. In the RFE, the director notified the petitioner that he must also submit a police clearance from Florida because the record reflects that he resided in Florida in 2009. On appeal, the petitioner provides the results of a Federal Bureau of Investigation (FBI) criminal history search based upon his fingerprints. The FBI criminal history search revealed no prior arrest data. The evidence submitted on appeal satisfies the regulatory requirement for a criminal background check. Accordingly, the petitioner has established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has now established that he is a person of good moral character. However, he has not demonstrated that he entered into marriage with his wife in good faith and she subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.