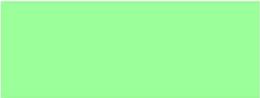


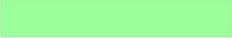
(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **OCT 07 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 Vermont Service Center director (“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 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 his spouse, a United States citizen.

The director denied the petition for failure to establish the requisite battery or extreme cruelty, joint residence, and good-faith entry into marriage. On appeal, the petitioner, through counsel, submits a brief and copies of evidence previously submitted below.

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, 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 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)(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 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.

* * *

(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 Israel who last entered the United States on October 13, 2008 as a B-2 nonimmigrant visitor. The petitioner married T-B-¹, a United States citizen, on July 8, 2011 in Florida and on November 19, 2012, the petitioner filed the instant Form I-360 self-petition. The director subsequently issued Requests for Evidence (RFEs) of, among other things, the requisite battery or extreme cruelty, joint residence, and good-faith entry into marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner did not enter into his marriage with T-B- in good faith. The petitioner submitted photographs of him and T-B- at their wedding and on other unspecified occasions, the significance of which he did not discuss. The petitioner also submitted copies of joint checking account statements and jointly addressed mobile telephone statements. The latter list a single cellular telephone number and do not indicate that both the petitioner and T-B- actually shared the account. The petitioner also submitted a copy of an unsigned life insurance form which did not identify a beneficiary, and which he later stated he never purchased.

Regardless of these documentary deficiencies, the petitioner's affidavits fail to provide probative information regarding his marital intentions. In his first affidavit, the petitioner recalled that he and his wife met in about April 2011, had an intense relationship, great chemistry, a short engagement and married on July 8, 2011. He stated that he gave T-B- money when she asked, she often did not answer her cellular telephone even late at night, and after a few months her attitude started changing and she was irritated at him all the time. The petitioner did not describe in detail his first meeting with T-B-, their courtship, wedding ceremony, alleged joint residence, or any shared experiences apart from the claimed abuse.

The petitioner initially submitted the affidavits of four friends. In his first affidavit, [REDACTED] stated briefly that the petitioner is like a brother whom he advised that his relationship with T-B- had no future. The first affidavit of [REDACTED] and the affidavits of [REDACTED] are identical in form and substance. All three affiants stated of the petitioner and T-B-: "Their marriage was bona fide and they established a life together as husband and wife. Their marriage was not entered into for the purpose of circumventing the immigration laws of the United States." None of the affiants provided probative information concerning the petitioner's relationship with T-B- or his marital intentions. In response to the second RFE, the petitioner submitted

¹ Name withheld to protect the individual's identity.

supplemental affidavits by [REDACTED] Mr. [REDACTED] recalled that he met T-B- about two years earlier at a restaurant in [REDACTED] he did not notice anything wrong with her, she and the petitioner married a few months later and the petitioner started to complain about her. Mr. [REDACTED] stated that he met T-B- the same day the petitioner met her, he did not trust her from the beginning but respected the petitioner's decision to marry her. Mr. [REDACTED] did not describe the circumstances under which he and the petitioner met T-B- and neither he nor Mr. [REDACTED] provided any further probative details of the petitioner's marital intentions.

On appeal, counsel asserts that the petitioner's and T-B-'s courtship lasted a year and a half before they decided to get married. This assertion is inconsistent with the petitioner's own statement that he and T-B- married less than two months after meeting. The petitioner submits no additional evidence on appeal. When viewed in the totality, the preponderance of the relevant evidence submitted below does not demonstrate that the petitioner entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The director also correctly determined that the petitioner did not reside with his wife during their marriage. In his first affidavit, the petitioner stated that he met T-B- in April 2011 and they married on June 8, 2011. On the Form I-360, the petitioner indicated that he and T-B- lived together from the month they met, April 2011, to February 2012 and that their last shared residence was on [REDACTED] Florida. This statement is inconsistent with two Forms G-325A, Biographical Information, dated October 4, 2011 and October 22, 2012, on which the petitioner stated that he resided on [REDACTED] Florida from June 2010 to July 2011. In response to the second RFE, counsel asserted that "the dates on the G-325A were incorrect" and the petitioner resided at the [REDACTED] "from April of 2011 to February 2012." The petitioner himself, however, does not explain the discrepancy.

In his first affidavit, the petitioner did not identify, describe or discuss any marital residence. In his second affidavit, the petitioner stated that he was renting an apartment on [REDACTED] in Orlando for work-related purposes, but was permanently living in [REDACTED] Florida. The petitioner provided no probative information concerning his claimed joint residence with T-B-. In their affidavits, the petitioner's friends, Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] all stated identically: "I have personal knowledge that [the petitioner and T-B-] resided together as husband and wife during their marriage." The affiants provided no basis for such knowledge and did not identify or describe any marital home.

The petitioner submitted copies of bills and statements jointly addressed to him and T-B- at the [REDACTED] Florida residence, but without a probative account of their claimed marital residence, these documents alone are insufficient to establish that the petitioner and T-B- resided together during their marriage.

In the second RFE and the denial decision, the director addressed various discrepancies regarding the petitioner's place of residence during his marriage and his relationship with a woman with whom he

apparently shares an apartment in Orlando, Florida. The petitioner stated in his second affidavit that he was renting an apartment in Orlando for over a year during his marriage because although he resided in [REDACTED] he traveled to Orlando once a week for work and keeping an apartment was more cost-effective than renting a hotel room. The petitioner asserted that he was subleasing a room in the apartment from a married couple, Mr. and Mrs. [REDACTED]. The record contradicts the petitioner's claims. A sublease agreement for the Orlando residence, dated March 14, 2012, one month after the petitioner's claimed separation from T-B-, identifies the petitioner as the sublandlord and the Paradas as the subtenants, not the reverse as the petitioner claimed. The agreement also states that the petitioner has been responsible for the Orlando residence since December 1, 2011, five months after his marriage to T-B-, which contradicts his claim that he resided with T-B- in [REDACTED] from April 2011 until February 2012. The petitioner has not resolved these discrepancies on appeal.

Even absent these discrepancies, however, the record lacks a probative account or other evidence of the petitioner's joint residence with T-B-. The preponderance of the relevant evidence does not demonstrate that the petitioner resided with his spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's spouse did not subject him to battery or extreme cruelty as defined in the regulation, and the evidence submitted on appeal fails to overcome this ground for denial. In the petitioner's first affidavit, he stated that T-B- would often ask him for money, would not answer her cellular telephone, sometimes stayed out all night with friends, and after a few months became irritated with him all the time. He recalled that on one occasion T-B- came home drunk and when he confronted her, she got angry, yelled, and threw things at a wall. The petitioner stated that she began to behave similarly more often and called him names like "jerk" and "useless man." He recalled that T-B- became angriest when he asked about her activities. The petitioner stated that he began to realize T-B- was taking money from him while he slept, and with the help of his friends and a professional investigator he discovered that she had been convicted of several drug-related offenses. The petitioner felt humiliated and devastated and no longer wants to waste his time and energy on his wife. In his second affidavit, the petitioner did not discuss any claimed abuse. The petitioner's affidavits do not demonstrate that his spouse battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

In her assessment, [REDACTED] a licensed clinical social worker, wrote that the petitioner was evaluated on three occasions in June and July 2012. Ms. [REDACTED] conveyed that after a few months of marriage, T-B- stopped answering her telephone, would leave late at night, yelled at the petitioner and threw things against the wall, all the while unbeknownst to him she was leading a life involving drugs. Ms. [REDACTED] determined that the petitioner "appears to be occasionally suffering from a state of denial" related to T-B-, and diagnosed him with depressive disorder not otherwise specified, generalized anxiety disorder, and posttraumatic stress disorder. While we do not question Ms. [REDACTED] professional opinion, her assessment conveys the petitioner's statements to her and provides no further, probative information regarding the claimed abuse.

In his first affidavit, [REDACTED] stated that he witnessed arguments between the petitioner and T-B- but briefly described only one during which she called him “pathetic” and “a loser.” In his second affidavit, Mr. [REDACTED] added that the incident occurred during a barbeque at an unspecified location. He also recalled a Jewish holiday gathering during which he, the petitioner and other friends felt humiliated because of an unspecified comment by T-B-. In his first affidavit, [REDACTED] stated that T-B- often yelled at the petitioner, did not like him to hang out with his friends, and became aggressive when he did. In his second affidavit, Mr. [REDACTED] stated that he once heard the petitioner and T-B- arguing in his bathroom after which she screamed for him to take her home. On another occasion, T-B- asked the petitioner to take her home early and when he asked her to wait she cursed and spit. Mr. [REDACTED] stated that T-B- asked the petitioner for money in front of him and he heard that she called him derogatory names and sometimes threw things against the wall. Mr. [REDACTED] stated that the petitioner and T-B- fought a lot, he heard a lot of screaming on an unspecified occasion, and she would leave and sleep elsewhere. The petitioner and the other affiants did not demonstrate below that T-B- battered him or subjected him to threats of violence, psychological or sexual abuse, or other conduct constituting extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel asserts that T-B- exerted compliance and control over the petitioner by, among other things, isolation and economic coercion. The record does not show that the petitioner was isolated. The petitioner asserted that he maintained two residences hundreds of miles apart from each other, traveled weekly from [REDACTED] to Orlando, and spent significant time socializing with a number of friends. Counsel also contends that there were many times T-B- did not return home because of her “excessive use of drugs and numerous arrests based on drug usage.” However, the police and court documents submitted by the petitioner show that T-B-’s arrests were in 2008 and early 2009, over two years before she married the petitioner. On appeal, counsel claims that the director “stated that evidence of drug and alcohol abuse by the US citizen spouse does not establish a claim for abuse.” The director’s decision contains no such statement and the relevant evidence does not show that any behavior of the petitioner’s wife, even if drug-related, included battery or extreme cruelty against the petitioner.

The preponderance of the relevant evidence does not demonstrate that T-B- ever battered the petitioner or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not shown that his spouse 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 petitioner has not overcome the director’s grounds for denial on appeal. The petitioner has not established that he entered into marriage with his spouse in good faith and that during their marriage, he resided with her and she subjected him to battery or extreme cruelty. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these three grounds.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.