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U.S. Citizenship
and Immigration
Services

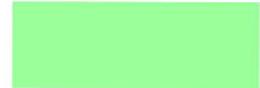


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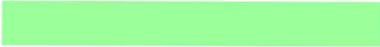
Office: VERMONT SERVICE CENTER

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:

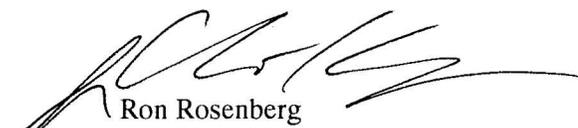


INSTRUCTIONS:

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 acting 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 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 resided with and entered into marriage with his wife in good faith and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits additional evidence.

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 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:

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Tanzania who entered the United States on April 19, 1998, as a nonimmigrant student. The petitioner married J-L-¹, a U.S. citizen, on October 24, 2008, in Maryland. The petitioner filed the instant Form I-360 self-petition on June 19, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into his marriage, residence with his wife, and the requisite battery or extreme cruelty. The petitioner, through counsel, responded to the RFE with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely filed an appeal.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reasons.

Joint Residence

The director correctly determined that the petitioner failed to establish that he resided with J-L- during their marriage based on the relevant evidence submitted below. The petitioner stated on his Form I-360 that he resided with J-L- from October 24, 2008 to November of 2011. The 2008 and 2009 Internal Revenue Service (IRS) federal income tax returns are unsigned and it is not apparent that they were filed with the IRS. Further, the 2008 Maryland state income tax form attached to the federal income tax return is dated April 15, 2010 and lists an address which is inconsistent with the petitioner's claimed marital address for that time period. The submitted lease shows that the petitioner and J-L- signed for a one year term beginning September 1, 2009, and ending September 1, 2010, to rent a residence at Maryland. However, in a previously submitted Form G-325A, Biographic Information dated July 18, 2011, the petitioner did not list the address as a place of former residence despite claiming to live there for over a year with J-L-. The record also contains a two-year lease, beginning September 1, 2009 and ending August 31, 2011, for the address signed by the petitioner and the mother of his child, former girlfriend Further, during a visit to the address on November 17, 2010, by U.S. Citizenship and Immigration Services (USCIS) officers, Ms. was present and appeared to reside there with the petitioner instead of J-L-. The petitioner's landlord confirmed that the petitioner resided at the address with his wife, but when shown photographs of the petitioner, J-L-, and Ms. the petitioner's landlord identified Ms. as the petitioner's wife. These inconsistencies remain unresolved on appeal.

In his first affidavit, the petitioner did not describe his shared residence with J-L- in any probative detail other than to mention that they lived separately from November of 2010 to March 2011. He

¹ Name withheld to protect the individual's identity.

did not, however, describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with J-L- after their marriage. In his second affidavit, the petitioner refuted the USCIS visit report stating that his former landlord denied being shown any photographs, but was afraid to submit a statement to this effect. The petitioner did not further explain the inconsistencies in the record nor describe his shared residence with J-L- in any probative detail.

In response to the RFE, the petitioner submitted an affidavit of J-L- who stated that she resided with the petitioner at the [REDACTED] address from October 24, 2008, to November of 2010. She stated that she moved out after getting into an argument with the petitioner over Ms. [REDACTED]. J-L- did not describe their residential routines or otherwise provide probative details regarding their living arrangements. Ms. [REDACTED] disputed the USCIS visit report and asserted that the petitioner resided at the [REDACTED] address with J-L-. Ms. [REDACTED] explained that she signed a lease with the petitioner with the permission of the landlord so that her children could continue to attend school in [REDACTED] Maryland. The petitioner himself did not provide this or any other explanation for the contradicting leases he signed with both J-L- and Ms. [REDACTED].

On appeal, counsel submits another joint lease with J-L-, joint utility bills, a letter from the IRS with attached 2009 income tax amendment, and a letter from a friend. The newly submitted lease introduces another inconsistency in the record. The lease is for an address on [REDACTED] in [REDACTED], Maryland for the rental period October 1, 2010, to September 30, 2011. However, the petitioner claimed to have separated with J-L- from November of 2010 until March of 2011. The joint utility bills, dated from February of 2011 to October of 2011, also reflect the [REDACTED] Maryland address. Additionally, the IRS letter submitted on appeal regarding the petitioner's amended 2009 tax return, is dated November 9, 2010 at the time of their separation, and is addressed to the petitioner and J-L- at the [REDACTED] address, not the [REDACTED] residence on the newly submitted lease commencing on October 1, 2010. The petitioner did not submit a personal affidavit on appeal and absent probative testimony from the petitioner clarifying his residential history, little weight can be given to the evidence submitted below and on appeal. In his letter, [REDACTED] states that he has known the petitioner and J-L- for years and visited their home in [REDACTED] Maryland. He does not, however, state a specific address for the petitioner nor does he describe any specific residential visits, observations, or otherwise provide probative information regarding the couple's living arrangements. Accordingly, the record does not establish by a preponderance of the evidence that the petitioner resided with his wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The director also correctly determined that the petitioner did not establish that he married J-L- in good faith. The 2008 and 2009 income tax returns submitted below were unsigned and unaccompanied by evidence that they were filed with the IRS. Nonetheless, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons

with personal knowledge of the relationship. All credible relevant evidence will be considered.” See 8 C.F.R. § 204.2(c)(2)(vii). In the petitioner’s first affidavit, he stated that he first met J-L- in 2003 when they were coworkers. He stated that they were close friends for years before they started dating about a year after her son from a previous relationship was born. The petitioner recounted that their relationship took off quickly and that when he proposed in July of 2008 at her family’s barbecue, she immediately said yes. The petitioner stated they got married on October 24, 2008, and that things went well in the beginning. The petitioner did not further describe their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. In his second affidavit, the petitioner stated that he and J-L- did not have many joint documents and that he married J-L- because he loved her, but did not further discuss his marital intentions.

The petitioner did not add any probative information establishing that he married J-L- in good faith. In her affidavit, J-L- stated that she met the petitioner in 2003 and they began dating in 2004. She stated that after a couple of months, their relationship became serious and they were later married on October 24, 2008. J-L-’s account is inconsistent with the petitioner’s testimony that they were friends for several years before starting to date. J-L-’s affidavit is also inconsistent with Ms. [REDACTED]’s affidavit in which she stated she was involved in a serious relationship with the petitioner from 2005 through 2006 and that on July 24, 2006, they had a child together. She recounted that her relationship with the petitioner ended after their son was born and the petitioner subsequently married J-L-.

The letters from the petitioner’s friends, [REDACTED] also did not contain probative details regarding the petitioner’s intentions in marrying J-L-. Mr. [REDACTED] stated only that he is aware the petitioner married J-L- on October 24, 2008. Pastor [REDACTED] stated that the petitioner and J-L- have been active members of their church, [REDACTED] since May of 2008. He stated that he observed the petitioner treat J-L- very well and that they were a good model to the other couples. He stated that the petitioner and J-L- sought marriage counseling through the church but that J-L- abruptly stopped attending the counseling sessions. Neither Mr. [REDACTED] nor Pastor [REDACTED] described any interaction with the couple in probative detail or otherwise provided information establishing their personal knowledge of the relationship.

On appeal, the petitioner submits a 2010 joint lease, joint water bills, a 2010 IRS letter and an amended 2009 federal income tax return, and the letter from Mr. [REDACTED]. In his letter, Mr. [REDACTED] states that the petitioner and J-L- visited his home several times and that he visited their home as well, but he does not describe any specific visit or provide any additional, probative information regarding his personal knowledge of the petitioner’s relationship with J-L-. The joint lease and the water bills are dated during a period of separation between the petitioner and J-L- and the IRS letter with attached amended 2009 tax return is dated at the time the petitioner states he and J-L- separated. Accordingly, a full review of the evidence submitted below and on appeal fails to establish the petitioner’s good-faith entry into his marriage with J-L-, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The director correctly determined that the petitioner failed to establish that J-L- subjected him to battery or extreme cruelty. The interim protective order, dated November 29, 2011, was granted for one day and did not provide probative details about any specific incidents of abuse. Dr. [REDACTED] the

petitioner's psychiatrist, briefly stated that the petitioner was under her care for counseling and treatment for domestic violence committed by his wife. Dr. [REDACTED] did not describe any incidents of battery or extreme cruelty, or otherwise discuss the claimed spousal abuse.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include... other forms of credible relevant evidence." *See* 8 C.F.R. § 204.2(c)(2)(iv). Here, the petitioner submitted two affidavits asserting that he was abused but without providing probative details regarding specific incidents of battery or extreme cruelty. The submitted affidavits from the petitioner's friends likewise did not provide any probative details regarding specific incidents of abuse.

On appeal, the petitioner submits a second letter from Dr. [REDACTED] who states that the petitioner has been under her care since June 28, 2012. Dr. [REDACTED] further states that the petitioner reported verbal, emotional, and physical abuse by J-L- on a daily basis. She concludes that the petitioner suffers from major depressive disorder and anxiety due to psychological trauma. While we do not question Dr. [REDACTED] professional expertise, her brief letter conveys the petitioner's statements and does not provide any substantive information regarding the claimed abuse. Nor does she explain the basis of her determination that the petitioner's depression resulted from the claimed abuse. Accordingly, the preponderance of the relevant evidence does not establish that the petitioner's wife subjected him to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi), and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that he entered into marriage with his wife in good faith, that they resided together, and that she battered or subjected him to extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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). Here, that burden has not been met and the petition remains denied.

ORDER: The appeal is dismissed.