



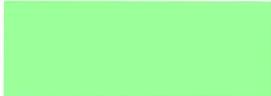
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 30 2014**

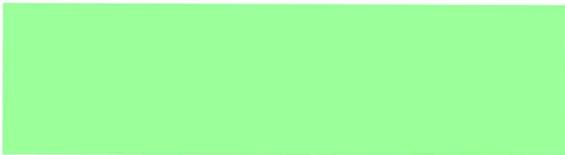
Office: VERMONT SERVICE CENTER

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 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 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.

The director denied the petition based on the petitioner's failure to establish that he entered into his marriage with his spouse in good faith.

On appeal, the petitioner, through counsel, submits a brief and 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 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:

(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.

* * *

(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, a citizen of Mali, entered the United States on May 21, 2001 as a nonimmigrant visitor. The petitioner married I-K-¹, a U.S. citizen, on December 27, 2009 and filed the instant Form I-360 self-petition on June 20, 2013. Upon review of the initial submission, the director issued a Request for Evidence (RFE) of good-faith entry into marriage, among other issues. The petitioner timely responded with additional evidence. Based on a review of the entire record of proceeding, the director found that the evidence did not establish eligibility for the benefit sought and denied the petition.

The petitioner, through counsel, subsequently appealed the director's decision, submitting a Form 1-290B (Notice of Appeal), a brief, and additional evidence.

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 ground for denial. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner did not establish that he married I-K- in good faith. In his initial Form I-360 submission, the petitioner provided a personal affidavit, dated February 10, 2013, in which he stated that he met I-K- at work in May 2008. He indicated that they exchanged phone numbers, I-K- invited him to dinner, they became friends, and they dated until they married in December 2009. The petitioner did not provide any probative information regarding the couple's courtship, wedding, or shared experiences beyond the details of the abuse.

In response to the RFE, the petitioner provided five affidavits from friends, most of which attest solely to the abuse. In an undated affidavit, the petitioner's neighbor, [REDACTED] stated that she attended the petitioner's and I-K-'s wedding at the petitioner's invitation; however, Ms. [REDACTED] did not provide any probative information regarding the event. [REDACTED] the petitioner's friend, asserted in

¹ Name withheld to protect the individual's identity.

an affidavit dated July 16, 2013 that the petitioner and I-K- were in love, and that she witnessed their marriage. However, she did not provide any further information regarding the wedding, the petitioner's courtship, or her personal knowledge of the couple's shared experiences. The affidavits from the petitioner's friends, discussed incidents of abuse but do not contain information regarding the petitioner's intent in marriage. In response to the RFE, the petitioner also submitted photographs of the petitioner's wedding ceremony and a photograph of the petitioner and his spouse on one other occasion.

In her decision, the director reviewed the relevant documentation and correctly found that it did not demonstrate that the petitioner married I-K- in good faith. The director noted that the petitioner's personal statement provided insufficient probative details regarding the petitioner's courtship of I-K- and their shared experiences beyond the details of the abuse. The director further observed that in the absence of documentation demonstrating the usual bona fides of a marriage, such as evidence of commingling of finances, USCIS must rely on other types of evidence to ascertain good-faith entry into the marriage, including detailed affidavits, which the petitioner did not provide.

On appeal, counsel states that the submitted evidence was sufficient to establish the petitioner's good-faith entry into his marriage. Counsel asserts that the director's acknowledgment that the petitioner may not have access to documents is inconsistent with her conclusion that the petitioner must sustain his burden of proof by other means. The director did not err. Section 204(a)(1)(A)(iii) of the Act does not require traditional forms of joint documentation 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). However, the petitioner is nonetheless required to demonstrate his eligibility for the benefit sought. In lieu of traditional joint documentation, 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." 8 C.F.R. § 204.2(c)(2)(vii). USCIS has sole discretion to determine credibility of evidence and weight accorded. Section 204(a)(1)(J) of the Act. Here, neither the petitioner's affidavit nor those of his friends and neighbors provide probative information regarding the petitioner's and I-K-'s courtship, wedding ceremony, shared residence and experiences. The undated and unlabeled photographs alone are insufficient to establish the petitioner's intent in marriage.

On appeal, the petitioner provides a psychological evaluation, dated February 16, 2014, prepared by which describes incidents of abuse. However, the director determined that the petitioner established that he was battered or subjected to extreme cruelty by his spouse, and the abuse is not at issue on appeal. The petitioner also provides a lease, dated December 1, 2009, in the names of I-K- and the petitioner, for a residence on . However the lease conflicts with the petitioner's February 10, 2013 affidavit, in which he stated that he and I-K- resided in his father-in-law's home after they got married (in late December 2009), and eight or nine months later moved to the residence. It is not apparent why the petitioner's lease is dated at least nine months prior to the time he stated that he moved to the address. The discrepancy in the date of the lease diminishes the credibility of the document.

In addition, on appeal the petitioner submits an affidavit from [REDACTED] dated February 19, 2014. Ms. [REDACTED] states that she has known the petitioner and I-K- since 2008, but does not indicate her relationship to either. She briefly asserts that the petitioner and I-K- were a happy couple and caring toward each other, and recounts they used to go to the movies, a restaurant, and a park. She also states that the petitioner used to drive I-K- to work. Ms. [REDACTED] does not state the source of her knowledge regarding the petitioner and I-K-'s relationship or provide detailed information regarding the petitioner's and I-K-'s courtship and other shared experiences sufficient to establish the petitioner's intent in marriage. On appeal, the petitioner provides photographs of what appear to be him and I-K- together on two occasions, in addition to several other undated photographs, the significance of which has not been explained.

The relevant documentation provided on appeal does not overcome the director's determination that the petitioner has not established that he married I-K- in good faith. The lease provided on appeal contains information that is inconsistent with the petitioner's prior claims regarding his joint residency with his spouse. However, even the absence of this discrepancy, the documentation submitted on appeal does not overcome the director's denial. Ms. [REDACTED] affidavit provides minimal information regarding the petitioner's relationship with I-K-, and the unlabeled photographs do not provide insight into the petitioner's intent in marriage. The preponderance of the relevant evidence submitted below and on appeal does not demonstrate that the petitioner entered into marriage with I-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has not overcome the director's ground for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner entered into his marriage in good faith. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on this ground.

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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.