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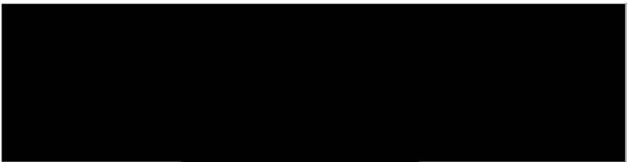
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted]
EAC 07 096 50010

Office: VERMONT SERVICE CENTER

Date: JUN 10 2009

IN RE:



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and, in response to a motion to reconsider, affirmed his decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 on the basis of his determination that the petitioner had failed to establish: (1) that he shared a joint residence with his wife; (2) that his wife subjected him to battery or extreme cruelty; and (3) that he entered into marriage with his wife in good faith.

The petitioner filed a timely appeal on February 25, 2008.

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 she¹ 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, 8 U.S.C. § 1154(a)(1)(J) 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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.

¹ The statutory and regulatory protections at issue in this case are available to both men and women. Although they were created by the Violence Against Women Act (VAWA), such protections are not limited to women. The petitioner's claim on appeal that the provisions of VAWA do not apply to him is incorrect.

- (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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .
- (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.

The petitioner is a citizen of Ghana who last entered the United States as an F-1 student on January 14, 2004. He married G-H,² a citizen of the United States, on November 18, 2005. G-H- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on December 20, 2005. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. The Forms I-130 and I-485 were denied on January 31, 2007. G-H- and the petitioner divorced on May 3, 2007.

The petitioner filed the instant Form I-360 on February 16, 2007. The director issued a request for additional evidence on September 12, 2007, and requested additional evidence to establish that the petitioner was subjected to battery or extreme cruelty; that he shared a joint residence with his wife; and that he entered into marriage with his wife in good faith. The petitioner responded on December 5, 2007. After considering the evidence of record, the director denied the petition on January 23, 2008.

Joint Residence

² Name withheld to protect individual's identity.

The first issue on appeal is whether the petitioner has established that he shared a joint residence with G-H-. As was noted previously, G-H- and the petitioner married on November 18, 2005. At the time the petition was filed, the petitioner submitted a copy of a residential lease agreement for an apartment located at [REDACTED] in Jersey City, New Jersey as evidence of the couple's alleged joint residence. The lease was signed by the petitioner (G-H- did not sign it) on December 14, 2005 for residence during the period of January 1 through December 31, 2006.

On his Form G-325A, which he signed on December 10, 2005, the petitioner stated that he had moved into the [REDACTED] address in December 2005, and on his Form I-485, which was also signed on December 10, 2005, the petitioner reported his current address as the [REDACTED] address. In his February 12, 2007 self-affidavit, the petitioner stated that he and G-H- began sharing a residence in "late December 05/early January 2006." However, the petitioner reported to the Jersey City Police Department that he did not move into the [REDACTED] address until January 7, 2006. These statements are inconsistent with one another.

Moreover, in his December 14, 2006 "affidavit of plaintiff," which was filed with his "Action for Divorce," the petitioner testified before the Supreme Court of the State of New York for King County that G-H- had lived in the State of New York "for a continuous period of one year immediately preceding the commencement of this action." Given that the couple was married on November 18, 2005, the petitioner's sworn testimony on December 14, 2006 that G-H- had been living in New York for a continuous period of one year immediately preceding the commencement of the divorce proceedings indicates that the couple never shared a residence after their marriage.

The petitioner also submitted second residential lease agreement for an apartment located at [REDACTED] in Union City, New Jersey. This lease was signed by the petitioner (G-H- did not sign it) on March 3, 2006. The lease was to begin on March 1, 2006 and last for one year. As evidence that he and G-H- lived together at this apartment, the petitioner submitted utility bills, bank statements, and copies of magazines.

The director noted these inconsistencies in his September 12, 2007 request for additional evidence. The director notified the petitioner that due to these inconsistencies, he no longer considered the petitioner to be a reliable or credible witness. Accordingly, the director informed the petitioner that any of his own statements had to be backed by independent evidence and that, without such evidence, any evidence based solely on the petitioner's testimony that lacked such supporting evidence would not be deemed as reliable.

In his December 3, 2007 self-affidavit, the petitioner stated he and G-H- were robbed while setting up their apartment at the [REDACTED] address. As such, they never moved into the apartment and broke the lease. They searched for a new apartment until they were able to locate the one at [REDACTED] in Union City. According to the petitioner, while they were between addresses they stayed in his old apartment on some nights, and on other nights they stayed with G-H-'s mother in Brooklyn. With regard to his assertions in the divorce complaint, the petitioner stated that "[t]he only

thing I can attest that to is an administrative error on the part of my lawyer Brian D. Perskin and his staff.”

The director found the petitioner’s response unconvincing, and denied the petition on January 23, 2008. With regard to the inconsistencies in the petitioner’s testimony, the director stated that the petitioner’s explanation that G-H- never actually lived at the [REDACTED] address does not explain why he declared that address as his residence on the Form G-325A in December 2005, when both the lease and the police report indicate that he did not move there until January 2006. With regard to the petitioner’s sworn affidavit that G-H- had lived in New York for over a year prior to the petitioner’s divorce filing, the director found his explanation insufficient. The director found that, again, due to these inconsistencies, he no longer considered the petitioner to be a reliable or credible witness. The director also noted that G-H-’s name did not appear on the police report; the petitioner was reported as the only victim of the burglary.

On appeal, the petitioner states the following: “My address information on the G-325A was accurate.” He states that he had agreed to leave his prior residence at the end of December 2005, and that his lease at the [REDACTED] address was to start in January 2006. The AAO finds the petitioner’s explanation inadequate. The evidence of record indicates that the petitioner was in fact not living at the [REDACTED] on December 10, 2005, as he asserted on the Form G-325A: he did not even sign the lease for the [REDACTED] apartment until December 14, 2005; the lease itself indicated that the term of residence would not begin until January 1, 2006; he told the officer taking the police report that he moved into the [REDACTED] address on January 7, 2006; and, finally, he now admits that the couple in fact never lived at the [REDACTED] address: because of the robbery, they never moved in.

With regard to his sworn testimony in his divorce proceeding that G-H- had lived in New York for longer than one year as of December 14, 2006 (which encompassed the entire period of their marriage to that point), the petitioner states that he “did not read through to review the divorce decree,” but that he now “see[s] the benefit of reading before you sign.” The AAO finds this explanation inadequate. As was noted by the director, the petitioner specifically stated in that affidavit that he had read it, that he knew the affidavit’s contents, and that contents of the affidavit were true.

The AAO agrees with the director that the inconsistencies in the petitioner’s testimony, and the discrepancies between the petitioner’s testimony and the evidence of record, undermine the credibility of that testimony and detract from the credibility of his claim. The evidence of record that does support the petitioner’s claim to have shared a joint residence, such as the utility bills and tax return are, alone, insufficient to establish his claim to joint residence.

The petitioner has failed to overcome the concerns of the director in his denial of the petition. The petitioner has offered conflicting testimony, outlined above, regarding the dates during which he and G-H- lived together at their purported joint residences. Such inconsistencies undermine the credibility of his claim. The petitioner has failed to establish by a preponderance of the evidence that he resided with G-H-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The second issue on appeal is whether the petitioner has established that G-H- subjected him to battery or extreme cruelty. The petitioner concedes on appeal that battery is not at issue; the issue is whether he was subjected to extreme cruelty as that term is defined for immigration purposes.

In his February 12, 2007 self-affidavit, the petitioner stated that the troubles in the marriage began shortly after they began sharing a residence. The petitioner stated that G-H- was no longer interested in doing things with him. When he asked G-H- about her "sudden change in attitude," she ignored him, which caused the petitioner a great deal of stress. The petitioner stated that G-H- began having extramarital affairs, and eventually became pregnant by one of her lovers. The petitioner stated that G-H- yelled at him, called him names, insulted him, and insulted his mother. On several occasions, she left the marital residence for days at a time without informing the petitioner of her whereabouts. She also refused to have sexual relations with the petitioner. The petitioner stated that he became depressed, moody, and angry; began developing severe migraines and body aches and pains due to stress; could not sleep at night; and could not function in the workplace.

In his December 3, 2007 affidavit, the petitioner stated that G-H- refused to help with housework; left him alone with her children; disappeared for days at a time; had extramarital affairs; called him names; ridiculed his culture; and called his brother names. He stated that he was unable to function at work, and that he developed warts on his feet as a result of stress.

In his February 10, 2007 affidavit, [REDACTED] the petitioner's brother, stated, with regard to incidents of abuse that he witnessed personally, that G-H- was rude to him; that G-H- was extremely rude to the petitioner; that G-H- insulted the petitioner; and that G-H-'s behavior had a very negative effect on the petitioner, which was obvious in both his speech and in his behavior.

In her February 5, 2007 affidavit, G-H-'s mother states that there were negative tensions between G-H- and the petitioner.

The record also contains a psychological evaluation from [REDACTED] dated April 30, 2007, who stated that he had been counseling the petitioner since January 2007. According to [REDACTED] the petitioner was "profoundly depressed" when the counseling process began in January 2007, but that the petitioner has made progress "in letting go."

On appeal, the petitioner states that, although G-H- never hit him hard enough to harm him, she did subject him to extreme cruelty, and cites a definition of extreme cruelty from a dictionary. He states that the treatment he experienced from G-H- led to depression, physical symptoms of stress, and has jeopardized his immigration status.

The AAO finds that the petitioner has failed to establish, by a preponderance of the evidence, that he was subjected to battery or extreme cruelty by G-H-. While G-H-'s actions as described in the record may have been unkind and inconsiderate, they do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor does the record establish that G-H-'s non-physical behavior was accompanied by coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. As noted by the court in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." The actions of G-H- as described by the petitioner, such as name-calling, infidelity, and rude behavior, appear to be indicative of a discordant marriage rather than abuse. Nor is there any evidence that the warts on the petitioner's feet were caused by G-H-'s treatment of him, as claimed by the petitioner. The petitioner has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. He has failed to establish that G-H- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The third issue on appeal is whether the petitioner has established that he married M-R- in good faith. With regard to his intentions upon entering into the marriage, the petitioner stated that he met G-H- in December 2004, and that by March 2005, they were dating one another exclusively. The AAO finds the petitioner's testimony insufficient, as it is too vague and generalized. General statements like those offered by the petitioner do not provide probative, detailed information regarding the couple's courtship. The petitioner has failed to offer a detailed account of the couple's first introductions, their courtship, their decision to marry, their engagement, or their early life together. Without such testimony, in the absence of documentary evidence, the AAO is unable to examine the petitioner's intentions upon entering into the marriage. The evidence of record fails to demonstrate that the petitioner entered into marriage with G-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that he and his wife shared a joint residence; that his wife subjected him to battery or extreme cruelty; and that he entered into marriage with his wife in good faith. However, the record indicates that the director did not issue a notice of intent to deny the petition (NOID) before he issued his decision. Although the record establishes that the petitioner is ineligible for the benefit sought, the petition must be remanded, solely on procedural grounds, so that the petitioner has the opportunity to respond to a NOID. The petition must be remanded to the director for issuance of a NOID in

compliance with the regulation in effect at 8 C.F.R. § 204.2(c)(3)(ii)³ on the date this petition was filed, and the director must afford the petitioner the opportunity to submit a response. On remand, the director must address the issues before the AAO on appeal; i.e., whether the petitioner has established that he shared a joint residence with G-H-, whether he was subjected to battery or extreme cruelty by G-H-, and whether he married G-H- in good faith.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's January 23, 2008 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

³ USCIS promulgated a rule on April 17, 2007 related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing of this petition on February 16, 2007.