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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

JUN 25 2009

EAC 07 229 52158

IN RE:

[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:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and affirmed his decision in response to a subsequent motion. 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 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 that he entered into marriage with his wife in good faith.¹ In response to a subsequent motion, the director affirmed his decision to deny the petition.

The petitioner filed a timely appeal on July 18, 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 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, 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:

¹ The AAO notes that, in the introduction to his June 12, 2008 decision, the director stated two grounds for his denial: (1) that the petitioner had failed to demonstrate that he had been subjected to battery or extreme cruelty; and (2) that the petitioner had failed to demonstrate that he had married his wife in good faith. However, the director did not discuss the issue of battery and/or extreme cruelty in his discussion; he only discussed the issue of whether the petitioner had entered into the marriage in good faith. The AAO also notes that, in his October 10, 2008 decision affirming the earlier decision, the director only discussed the issue of whether the petitioner had entered into the marriage in good faith. It appears, therefore, that the director's reference to the issue of battery or extreme cruelty in the introduction to the June 12, 2008 decision was a typographical error.

- (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.

* * *

- (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 Jamaica who entered the United States in or around 1990. He married L-W-² a citizen of the United States, on February 12, 2005. The record indicates that the petitioner was apprehended by immigration authorities on April 27, 2005, and told them that L-W- had moved out of the couple's joint residence in March 2005. A Warrant for Arrest of Alien was issued, and a Notice to Appear was issued.

According to the petitioner, L-W- moved back into the couple's joint residence in August 2005. She filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on August 24, 2005.

The petitioner filed the instant Form I-360 on July 30, 2007. The director issued a request for additional evidence on August 17, 2007, and requested additional evidence to establish that L-W- subjected the petitioner to battery or extreme cruelty; that the petitioner is a person of good moral

² Name withheld to protect individual's identity.

character; and that the petitioner married L-W- in good faith. The petitioner responded on November 20, 2007, and submitted a second response on December 17, 2007.

After considering the evidence of record, the director denied the petition on June 12, 2008. In response to a motion filed by the petitioner, the director affirmed his decision to deny the petition on October 10, 2008.

Good Faith Entry into Marriage

The sole issue on appeal is whether the petitioner has established that he married L-W- in good faith. In finding the evidence of record insufficient to establish this requirement, the director stated in his June 12, 2008 denial that the petitioner's own testimony with regard to his intentions upon entering into the marriage was insufficiently detailed. With regard to the testimony contained in the affidavits of record, the director stated that those individuals spoke mostly to L-W-'s mistreatment of the petitioner, that their testimony was based primarily on the petitioner's own rendition of events, and that they did not appear to have any first-hand knowledge of the couple's relationship. With regard to the tenant letter and copies of drivers' licenses, the director stated that although these documents were evidence of joint residence, they did not demonstrate the shared financial assets and liabilities often found in a good faith marriage. With regard to the documentary evidence submitted by the petitioner, the director noted that there was no evidence that any premiums had ever been paid on the life insurance policy, and that the automobile insurance policy merely named the petitioner as an additional driver. Although the receipt from "Mo Money" and the BellSouth telephone bill named both the petitioner and L-W-, the director stated that "[i]t would seem reasonable that additional documentation of a good faith marriage would be available from a relationship spanning over two years," such as jointly held bank accounts or jointly filed taxes.

In his October 10, 2008 decision affirming the June 12, 2008 denial, the director addressed additional evidence submitted by the petitioner. The director noted, first, that the petitioner's supplemental testimony spoke to L-W-'s mistreatment, and not to the issue of whether he entered into the marriage in good faith. The director again informed the petitioner that his testimony with regard to his intentions upon entering into the marriage was insufficiently detailed. With regard to the bank statements submitted by the petitioner, the director noted that the account was in the petitioner's name only, and did not appear to be a jointly-held account. The director also noted that although it appeared that the premium for the life insurance policy had been paid from this account, that documentation, combined with one BellSouth telephone bill, was insufficient to establish the petitioner's intentions upon entering into the marriage. Finally, with regard to the additional affidavits submitted by the petitioner, the director stated that although the affiants claimed that they had met L-W- and that the marriage was entered into in good faith, their testimony was insufficiently detailed.

On appeal, the petitioner again fails to supplement his own testimony with regard to his intentions upon entering into the marriage with additional details. Rather, he resubmits the "Mo Money" receipt, which has already been deemed insufficient; the single BellSouth statement, which has also

already been deemed insufficient; and the automobile insurance policy for L-W- naming the petitioner as a named driver, which has also been previously deemed insufficient.

The only new document submitted on appeal is an additional automobile insurance policy from June 2006.

Upon review of the entire record of proceeding, the AAO agrees with the director's previous determinations that the petitioner has failed to establish that he married L-W- in good faith. The AAO agrees with the director's previous findings with regard to the insufficiency of the evidence submitted by the petitioner in support of his contention that he married L-W- in good faith. The AAO also questions why the petitioner has failed to submit the couple's tax returns.

The petitioner stated on the Form G-325A that, as of August 2, 2005, he had lived at [REDACTED], in North Miami Beach, Florida, since August 1999. In his July 27, 2007 self-affidavit, the petitioner stated that he met L-W- "towards the end of 2004." He also stated that L-W- did not move into his apartment until after the couple's February 12, 2005 marriage. However, the evidence of record undermines the petitioner's testimony. The record contains a copy of L-W-'s driver's license, which was issued by the State of Florida on April 17, 2003. The address on her driver's license is the [REDACTED] residence. If L-W- and the petitioner did not meet until the end of 2004, then it is unclear why L-W- would have claimed the petitioner's apartment as her place of residence in April 2003. This discrepancy in the petitioner's testimony undermines the credibility of his testimony.

However, even if the petitioner's testimony did not conflict with the evidence of record, it would still be insufficient to demonstrate that he entered into the marriage in good faith, as his testimony relating to his intentions upon entering into the marriage is vague and generalized. In his July 27, 2007 self-affidavit, the petitioner testified that he and L-W- met in late 2004 at a friend's home, and exchanged telephone numbers that same evening. The petitioner called L-W-, and they began dating shortly thereafter. He proposed marriage "around" January 2005, and they married on February 12, 2005. L-W- moved into the petitioner's apartment after the wedding. The petitioner's testimony lacks detailed information regarding the couple's relationship, such as information about their courtship; the types of activities they enjoyed together; their decision to marry; their engagement; and their wedding. Such information would have allowed the AAO to make a determination on the petitioner's intentions upon entering into the marriage. The director notified the petitioner in both of his decisions that his testimony with regard to the couple's relationship was insufficient, but the petitioner has elected not to provide further details.

He has failed to establish that she entered into marriage with L-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO concurs with the director's determination that the petitioner has failed to demonstrate that he entered into marriage with L-W- in good faith. He is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.