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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

B5

SEP 14 2009

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 07 228 50338

IN RE: Petitioner: [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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 because the petitioner did not establish that he married his wife in good faith.

On appeal, counsel submits a letter, additional evidence and copies of documents previously submitted.

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 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 filed 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:

> *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.
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> * * *
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> (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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Morocco who entered into the United States on January 27, 2007, as a K-1 nonimmigrant. On February 27, 2007, the petitioner married N-L-[1], a U.S. citizen, in Orlando, Florida.

The petitioner filed the instant Form I-360 on July 25, 2007, and concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On April 18, 2008, the director issued a Request for Evidence (RFE) of the requisite joint residency, good moral character, and good-faith entry into the marriage. The petitioner, through counsel, timely responded with additional evidence. On December 17, 2008, the director denied the petition because the petitioner did not establish that he married his wife in good faith. On January 12, 2009, the director denied the I-485 application, due to the denial of the I-360 petition. Counsel timely appealed the denial of the I-360 petition.

On appeal, counsel explains or discounts certain factual inconsistencies and discrepancies cited by the director. Counsel submits a travel itinerary from a flight that the petitioner and N-L- took together on January 30, 2007, as new evidence of the petitioner's good-faith marriage.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's claim of entering the marriage in good faith:

- The petitioner's affidavit, dated May 16, 2007;
- An affidavit, dated May 10, 2008, and a statement, dated January 1, 2009 (submitted on appeal) from the petitioner's brother, ;
- An affidavit, sworn on July 9, 2008, and a statement, dated January 5, 2009 (submitted on appeal), from the petitioner's brother,

[1] Name withheld to protect individual's identity.

- A statement, dated January 1, 2009, from
- A statement, dated February 1, 2009, from
- A statement, dated January 9, 2009, from
- A letter, dated January 8, 2009, from
- A statement, dated January 5, 2009, from the Family";
- A clinical assessment of the petitioner, dated May 25, 2007, from LISAC; and
- Photographs of the petitioner and N-L- together.

In his May 16, 2007 affidavit, the petitioner states that his brother, who lived in Milwaukee, Wisconsin, was a friend of N-L-. The petitioner states that N-L- was looking for a husband, and after seeing his pictures, she began to email him, and ultimately called him at his parents' house on August 28, 2005. The petitioner reports that N-L- began calling him daily, and she told him her history, which included two divorces. The petitioner states that after four months, they decided to get married, and N-L- sent him a "marriage ring." The petitioner states that on January 17, 2006, N-L- went to Morocco, where they were married after one week, and she stayed with him at his parents' house for one month. The petitioner reports that N-L- returned to the United States to fill out a fiancé petition and resumed calling him daily, talking to him for at least four hours every day. The petitioner describes N-L- as "very jealous" and "very controlling" and states that she accused him of infidelity, including having sexual relations with his own sister. The petitioner states that many times he wanted to break up with her, but she cried and begged him to stay with her and promised she would change. The petitioner explains that she did not change and that he isolated himself from other people, until he "asked her again to leave me," whereupon she again called him continually crying and asking for his forgiveness. The petitioner states that he wanted to divorce her, but she again begged him to marry her and promised to change. The petitioner explains that he arrived in the United States on his fiancé visa on January 27, 2007. The petitioner explains that for two weeks he stayed home and went to N-L-'s office, that N-L- "controlled every small thing," including the cell phone, food, and apartment key. The petitioner states that he became afraid and, from his wife's workplace, he emailed his Orlando address to his brother, in the event that something happened to him. The petitioner states that N-L- accused him of sending email to a woman and threatened that something "really bad" would happen to him if he ever left her. The petitioner explains that he ran home from N-L-'s office, picked up the money from his brother, and went to the airport. The petitioner states that he did not have enough money for a plane ticket and, meanwhile, his wife's friend showed up at the airport and took him to her house to spend the night. The petitioner reports that by morning, he decided to go back with N-L-. The petitioner states that, even though he and N-L- decided to forget the past and start over, N-L- did not change. The petitioner states that during one argument, N-L- ended up calling the police to tell them that he was trying to kill her and that he should go to jail. The petitioner states that, after hearing both sides of the story, the police arrested N-L- and took her to jail, and that was the last he ever saw of her. The petitioner explains that he moved to Phoenix where he currently lives.

In his May 10, 2008 affidavit, the petitioner's brother, states, in part, that the petitioner married N-L- in good faith, and that the petitioner and N-L- stayed with "us" in Morocco when the petitioner's brother was visiting their mother's house. In his January 1, 2009 statement

submitted on appeal, again states that the petitioner married N-L- in good faith, and that he advised the petitioner to move out because of N-L-'s abuse. states that two years of correspondence between them and "few thousands of phone calls can prove" their good-faith marriage.

In his affidavit, sworn on July 9, 2008, the petitioner's brother, states, in part, that the petitioner married N-L- because he loved her very much. also states that the petitioner spent several hours a day on the phone with N-L- during their courtship, and N-L- flew to Morocco, where they became engaged. states that after their marriage, N-L- treated the petitioner worse and worse, and the petitioner ultimately could not stay with her because he feared for his life. In his January 5, 2009 statement submitted on appeal, , states, in part, that the petitioner married N-L- in good faith, and that he turned down a high-paying job, the opportunity to take care of his parents' business, and plans to study in France, in order to be with N-L-. also states that N-L- did not want to include the petitioner on a lease document, bank account, or mail box when they lived together in Florida.

In her January 1, 2009 statement, states, in part, that she met the petitioner and N-L- in Morocco and invited them to her family's home on a few occasions. states that the petitioner and N-L- entered into the marriage in good faith, and that she went to the mosque with the petitioner and N-L.

In his February 1, 2009 statement, states, in part, that he is a friend of the petitioner's brother, and that he personally knew the petitioner when the petitioner went with his fiancée, N-L-, for a visit to Phoenix, Arizona. Mr. states that he could tell that the petitioner was in love with N-L- "from the way he talked to her and treated her." Mr. states, "I have no doubt that [the petitioner] married [N-L-] in bona fide [sic]."

In her January 9, 2009 statement, states, in part, that the petitioner is her good friend and that he entered into the marriage with his wife in good faith.

In his January 8, 2009 letter, states, in part, that he has known the petitioner for about two years, and that the petitioner shared with him that he enjoyed living in Florida and wanted Mr. to meet his wife, N-L-, the next time they came for a visit.

In their January 5, 2009 statement, the family members state, in part, that the petitioner married N-L- in good faith, and that they saw the petitioner and N-L- together when they visited the petitioner's brothers in Phoenix, Arizona. They also state that the petitioner seemed very excited to be with N-L-, and that he kissed and hugged her and showed her much affection.

At the outset, although the petitioner claims to have married N-L- in Morocco in January 2006 in a religious ceremony, he submitted no evidence of that event. The petitioner submitted a copy of his marriage certificate, showing that he and N-L- were married on February 27, 2007 in the United States. Information on the petition also indicates that the petitioner and N-L- lived together from the date he entered into the United States on a fiancé visa, January 27, 2007, until April 3, 2007.

Upon review of the record, we do not find that the evidence submitted by the petitioner and on his behalf is sufficient to establish the petitioner's good-faith entry into the marriage. The petitioner states that he met N-L- through his brother, who gave N-L- the petitioner's email address. The petitioner also states that after emailing one another, N-L- called him for the first time on August 28, 2005, and after four months, they decided to get married, whereupon N-L- sent him a "marriage ring." Beyond this brief description, the petitioner does not explain his own feelings and reasons for marrying and repeatedly reconciling with N-L-. He also does not describe their religious marriage ceremony in Morocco or their wedding in the United States. The petitioner's statement predominately discusses the abuse and provides no probative details regarding his feelings and intentions in marrying N-L-. The relevant affidavits submitted by the petitioner are from friends and relatives, who provide primarily only general statements regarding the petitioner's relationship with N-L-. Their statements provide no probative details regarding the petitioner's relationship with N-L- and interactions with each other, and contain only vague statements such as "they were just a perfect couple," "[they] seemed such a happy couple," and "[the petitioner] seemed very much in love . . ." The petitioner has demonstrated that a marriage took place on February 27, 2007, in Orlando, Florida, and the photographs of the petitioner and N-L confirm that they were pictured together, but the marriage certificate and photographs alone do not establish the petitioner's good-faith entry into the marriage.

In her May 25, 2007 clinical assessment of the petitioner, [redacted] states, in part, that she conducted a two-hour session with the petitioner in English, and that the petitioner's older brother, [redacted], also participated. On Page 9 of her assessment, [redacted] concludes that the petitioner entered into his marriage in good faith, but she provides no probative information apart from the petitioner's own statements. While we do not question the expertise of [redacted], her testimony fails to establish that the petitioner entered into his marriage in good faith.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the lack of probative detail and substantive information in the supporting statements and the petitioner's own testimony regarding his decision to marry, his wedding, and his relationship with N-L- apart from the abuse, significantly detracts from the credibility of his claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has not demonstrated that he entered into his marriage in good faith. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.