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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**

B9

FILE:

[REDACTED]
EAC 08 232 50243

Office: VERMONT SERVICE CENTER

Date: APR 06 2010

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:

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. 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 because the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen, that he married his wife in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a statement.

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:

(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 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.

(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, and proof of the termination of all prior marriages, if any, of ... the self-petitioner

* * *

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a

native and citizen of Nepal who was admitted into the United States on August 21, 1993, as an F-1 nonimmigrant student for duration of status. Information on the certificate of marriage indicates that on December 3, 2004, the petitioner married C-R-¹. Information on the petition indicates that C-R- is a U.S. citizen born in the United States.

The petitioner filed the instant Form I-360 on August 25, 2008, and concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On September 2, 2008, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character and good-faith entry into the marriage. The petitioner responded with additional evidence. On May 21, 2009, the director issued a second RFE of, *inter alia*, the requisite qualifying relationship, battery or extreme cruelty, good moral character, and good-faith entry into the marriage. The petitioner again responded with additional evidence. On August 12, 2009, the director denied the instant I-360 petition because the petitioner did not establish that he had a qualifying relationship as the spouse of a U.S. citizen, that he married his wife in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage. On September 9, 2009, the director denied the I-485 application, based on the denial of the instant I-360 petition. The petitioner timely appealed the denial of the instant I-360 petition.

On appeal, the petitioner asserts that C-R- is a U.S. citizen born in the State of Oklahoma. He also asserts that he married C-R- in good faith, and that C-R- abused him. He submits no additional supporting documentation.

Qualifying Relationship and Eligibility for Immediate Relative Classification

On the Form I-360, the petitioner stated that he married C-R- who is a native and citizen of the United States. As noted by the director, the petitioner did not submit the requested evidence to establish that C-R- is a U.S. citizen. The AAO acknowledges the petitioner's assertion on appeal that C-R- is a U.S. citizen born in the State of Oklahoma. Going on record without supporting documentary evidence, however, is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As discussed above, the petitioner has failed to submit evidence of C-R-'s claimed U.S. citizenship. Additionally, USCIS' attempts to verify the citizenship status of C-R- have failed to establish her United States citizenship or lawful permanent residence status. Therefore, he is unable to establish that he had a qualifying relationship as the spouse of a U.S. citizen and that he is eligible for classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (bb).

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's claim that he married his wife in good faith:

¹ Name withheld to protect individual's identity.

- The petitioner's affidavit, dated August 18, 2008; his undated letter submitted in response to the director's May 21, 2009 RFE; and his statement submitted on appeal; and
- The petitioner's "retail installment contract-security agreement" with [REDACTED], signed by the petitioner and C-R- on October 23, 2004, for the purchase of a manufactured home.

In his August 18, 2008 statement, the petitioner states that on December 3, 2004, he entered into a valid and legally binding marriage with C-R- and that they bought a mobile home together and lived at [REDACTED] in Oklahoma City. The petitioner explains that after about two years they began to have problems, whereupon C-R- moved out around March of 2007, taking all their pictures and valuable belongings with her.

In his undated letter submitted in response to the director's May 21, 2009 RFE, the petitioner states that he entered into the marriage in good faith, he knew C-R- before their marriage, and they understood each other very well. The petitioner also states that they decided to buy a house and live together peacefully, but "it went wrong direction." The petitioner contradicts himself in this document as follows: on the first page he states that, when she moved out, C-R- took with her all of his pictures and all the related documents that they "had together" and that he never contacted her after she left him; on the second page he states: "I could not submit all the documentation between our relationship because she destroyed all documents an[d] our marriage pictures." It is noted that this letter also conflicts with the petitioner's August 18, 2008 statement, in which the petitioner does not state that C-R- destroyed all of their documents and wedding photographs.

On appeal, the petitioner again states that he entered into the marriage in good faith and that he and C-R- lived together at the [REDACTED] address until C-R- became abusive and moved out around March of 2007.

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). The petitioner, however, has submitted scant testimonial evidence to support a finding that he entered into his marriage in good faith. As discussed above, the petitioner's statements regarding the lack of documents of his good-faith marriage contain inconsistencies. Thus, the petitioner's statements are equivocal and do not fully resolve the discrepancies in the record. Moreover, the petitioner has not presented any testimony regarding how he met his wife, their courtship, decision to marry, wedding, and shared experiences. 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.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. In addition to the documentation mentioned above, the record contains copies of

various medical records and related bills for the petitioner. As noted by the director in his decision, however, it is unclear what the petitioner was attempting to demonstrate with the submission of this documentation.

In his August 18, 2008 statement, the petitioner states that after his marriage to C-R-, they lived together at the [REDACTED] address in the mobile home they purchased. The petitioner states that after about two years, they began to have financial problems, whereupon C-R- began to get mad at him and insult him. The petitioner states that C-R- finally "affiliated with another person," which made it difficult to stay with her. The petitioner also states that C-R- threatened to have him deported if he did not pay her while she stayed with another person, even though he did not have money to support her. The petitioner explains that around January of 2007, C-R- was always insulting and kicking him, and that she sometimes threw a plate at him and left the house. The petitioner explains that C-R- never agreed to file any immigration paperwork for him or have a child with him, and that she always made him do the cooking and never helped him. The petitioner reports that C-R- left their house around March of 2007, whereupon she took all of their valuables, including clothing and pictures. The petitioner states that even though C-R- did not tell him where she went, he later found out that she became involved with another person. The petitioner explains further that he still has not filed for a divorce because, after leaving him, C-R- has never contacted him.

In his undated letter submitted in response to the director's May 21, 2009 RFE, the petitioner states that during their marriage, he and C-R- lived together in their house in Oklahoma. The petitioner states that even though he paid all of the house payments, C-R- became angry and insulting when he was unable to provide additional support for her personal belongings. The petitioner reports that C-R- verbally abused him and pulled out a kitchen knife and threatened to stab him, and that many times he had to sleep at his friend's house. The petitioner states that C-R- broke furniture and kitchen stuff, and that she took all of his pictures and related documents. The petitioner also reports that C-R- did not leave any of her personal belongings when she left him, and that he has never contacted her since. The petitioner goes on to say that their marital problems went on six or seven months before C-R- left, and that C-R- destroyed all of their documents and marriage pictures. The petitioner reports that he was mentally tortured and that he did not meet with his friends for six months, but stayed at home and met only a couple of friends. The petitioner reports further that he went to the doctor because of heart problems, but feels better now with medication.

On appeal, the petitioner states that he was mentally and physically abused by C-R-. The petitioner also states that in order to meet C-R-'s demands, he bought a house and lived with her, but her abuse made his life difficult. The petitioner reports that he was mentally isolated, which he was unable to report "because of her fear," and that later on he was treated for heart problems.

In this case, we do not find the petitioner's evidence to be credible or sufficient to meet the petitioner's burden of proof. It is unclear why the petitioner did not discuss in his original August 18, 2008 statement the claimed knife attack or his health problems, which he described in his undated response to the director's RFE. Moreover, even though the petitioner submits various

medical-related documents and indicates that he has been treated for heart problems, the record contains no evidence that his medical condition is connected to the alleged abuse. As discussed above, the petitioner has not resolved the inconsistencies and deficiencies in the record that diminish the evidentiary value of his statements. As described, the actions by C-R- 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. The claims made by the petitioner fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that C-R-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner.

Upon review of the record in its entirety, the record does not indicate that C-R- subjected the petitioner to battery. The relevant evidence also fails to demonstrate that C-R- subjected him to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that he had a qualifying relationship as the spouse of a U.S. citizen, that he is eligible for immigrant classification based upon that relationship, that he married C-R- in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.