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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:

EAC 07 226 51363

Office: VERMONT SERVICE CENTER

Date: APR 12 2010

IN RE:

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)

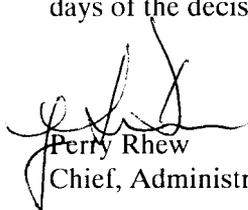
ON BEHALF OF PETITIONER:

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 service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal because no brief and/or additional evidence was submitted in support of the appeal. The matter is again before the AAO on a motion to reconsider. The motion will be granted and the previous decision to deny the petition will be affirmed.

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 July 1, 2008, determining that the petitioner had not established that he had entered into the marriage in good faith.

On motion, the petitioner states that the motion is based on the ineffective assistance of counsel, and requests an extension of time to submit additional evidence and to seek another attorney. As supporting documentation, the petitioner submits the following: the petitioner's former counsel's brief dated August 26, 2008; the petitioner's affidavit dated August 26, 2008; photocopies of two photographs; and previously submitted documentation.

The AAO acknowledges the petitioner's assertion that he was misrepresented by his attorney. To prevail on a deficient performance of counsel claim, the alien must submit: (1) an affidavit attesting to the relevant facts, detailing the agreement that was entered into, what actions were supposed to be taken and what the attorney did or did not do; (2) evidence that former counsel was informed of the allegations, given an opportunity to respond and former counsel's response, if any; and (3) evidence that a complaint has been filed with the appropriate disciplinary authorities regarding such representation or an explanation of why such a complaint was not filed. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) at 638-39. On appeal, the petitioner does not provide any documentary evidence listed above to satisfy his ineffective assistance of counsel claim. Accordingly, the petitioner's assertions in this regard have no merit.

It is also noted that a motion to reopen must be supported by affidavits or other documentary evidence at the time of filing. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. See 8 C.F.R §§ 103.5(a)(2) and (3). Thus, the documentary evidence submitted by the petitioner on motion, which includes his former counsel's brief dated August 26, 2008, the petitioner's personal affidavit dated August 26, 2008, and two photographs, will be considered in this proceeding. However, any additional documentation submitted by the petitioner subsequent to the filing of the motion will not be considered.

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.

* * *

(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 the Philippines who married P-R¹, a U.S. citizen, in the Philippines on April 14,

¹ Name withheld to protect individual's identity.

2005. On October 26, 2006, the petitioner was admitted into the United States as a K-3 nonimmigrant spouse of a U.S. citizen. On November 16, 2006, the petitioner filed Form I-485, Application to Register Permanent Resident or Adjust Status. On May 10, 2007, the director denied the I-485 application due to P-R-'s withdrawal of the affidavit of support that she filed on the petitioner's behalf, thereby rendering him ineligible for adjustment of status under § 245 of the Act.

The petitioner filed the instant Form I-360 on July 23, 2007, and concurrently filed a second Form I-485 application. On February 27, 2008, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character, joint residency, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner responded with additional evidence. On June 30, 2008, the director denied the petition because the petitioner did not establish that he married his wife in good faith. On June 3, 2009, the AAO summarily dismissed a subsequent appeal because no brief and/or additional evidence was submitted in support of the appeal. The petitioner timely filed the instant motion to reopen and consider.

On motion, the petitioner's former counsel claims in his August 26, 2008 brief that it has already been established that the petitioner and P-R- were married in the Philippines that that the marriage was terminated because of P-R-'s extreme cruelty to the petitioner. The petitioner's former counsel states that the approved Form I-130, Petition for Alien Relative, serves as prima facie evidence that the marriage is bonafide.

While relevant, the petitioner's admission to the United States in K-3 status as the nonimmigrant spouse of P-R- is not prima facie evidence of his good faith in entering their marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. See *INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition might not *standing alone* prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws."). As we shall discuss below, the petitioner has not met his burden of proving that he entered into his marriage in good faith.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's claims:

- The petitioner's April 17, 2008 statement submitted in response to the director's RFE;
- The petitioner's August 26, 2008 affidavit submitted on motion;
- A March 8, 2007 letter from [REDACTED]; and
- Two photographs of the petitioner with P-R-.

In his April 17, 2008 statement submitted in response to the director's RFE, the petitioner stated that he married P-R- on April 14, 2005 in the Philippines. The petitioner reported that P-R- was very nice and kind and he thought they would have a good life together in the United States. The remainder of the

statement discussed the alleged abuse.

In his August 26, 2008 statement submitted on motion, the petitioner states, in part, that: he met P-R- in the Philippines; he loved her the first time he saw her; they loved the same music and food and had the same friends; he did not care about their age difference; and he still loves her even though she was cruel to him. The remainder of the statement discusses the alleged abuse.

The letter submitted by [REDACTED], a victim's advocate at [REDACTED], states that the petitioner married P-R- two weeks after they had met in the Philippines.

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 petitioner's testimony regarding how he met his wife, their courtship, their decision to marry after knowing each other for only two weeks, their wedding, and their shared experiences, significantly detracts from the credibility of his claim. Additionally, while photographs may confirm that the petitioner and P-R- were pictured together, these documents alone do not establish the petitioner's good-faith entry into the marriage.

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. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The previous decision of the AAO, dated June 3, 2009, will be affirmed. The petition is denied.