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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
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Services**

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FILE:

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EAC 02 119 52703

Office: VERMONT SERVICE CENTER

Date:

FEB 19 2010

IN RE:

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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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director revoked approval of 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 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 revoked approval of 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 married his wife in good faith.

Counsel filed an appeal and submitted copies of documents already included in the record.

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:

- (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.
- (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.

* * *

- (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 Ecuador who claims to have entered the United States, without inspection, in or around April 1993. He married T-O-¹, a citizen of the United States, on March 6, 1997. T-O- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on March 20, 1997. The petitioner filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date. The Forms I-130 and I-485 were denied on July 18, 2000.

The petitioner filed the instant Form I-360 on February 20, 2002, and it was approved on January 23, 2003. Upon consideration of statements made by the petitioner at an interview in connection with his adjustment of status interview on August 4, 2004, the director issued a notice of intent to revoke (NOIR) approval of the petition on December 11, 2008. In his NOIR, the director notified the petitioner of deficiencies in the record and afforded him the opportunity to submit additional evidence to establish that the petitioner shared a joint residence with T-O-; that he was subjected to battery by T-O-; or that he married T-O- in good faith. The petitioner responded on January 14, 2009. After considering the evidence of record, the director revoked approval of the petition on May 7, 2009.

Joint Residence

The first issue on appeal is whether the petitioner has established that he and T-O- shared a joint residence. As noted previously, the director initially approved the petition on January 23, 2003. However, that approval was revoked upon the director's determination that the petitioner had failed to resolve questions that arose as a result of testimony given at an August 4, 2004 interview conducted in connection with his adjustment of status.

¹ Name withheld to protect individual's identity.

On the Form I-360, the petitioner stated that he and T-O- lived together from December 1996 through January 2001. However, at the August 4, 2004 interview, the petitioner told the interviewer that T-O- left him in January 1999, and that he had not seen her since that time.

In his January 12, 2009 self-affidavit, the petitioner stated that the interviewer was upset with him because he did not understand the interviewer's questions, and because he dressed inappropriately. The petitioner also stated that the interviewer was intolerant and angry.

The director found the petitioner's assertions insufficient to overcome the grounds of the NOIR, and revoked approval of the petition on May 7, 2009.

On appeal, counsel contends that the petition should be approved. Counsel repeats the petitioner's assertions that the interviewing officer was rude, and that, due to the petitioner's appearance, treated him poorly.

Upon review of the entire record of proceeding, the AAO finds that the record fails to establish that the petitioner and T-O- shared a joint residence. As a preliminary matter, the AAO notes that neither counsel nor the petitioner offers any explanation as to why the petitioner told the interviewer that he had not seen T-O- since 1999. It is not enough to argue that the interviewer was rude: the petitioner must, at minimum, explain *why* he told the interviewer that he had not seen T-O- since 1999. The petitioner's assertion on the Form I-360 that the joint residence ended in January 2001, in his 2002 self-affidavit that it ended in April 2001, and his statement to the interviewer that it ended in 1999 contradict one another directly. The petitioner has failed to resolve his contradictions, and his failure to do so undermines the probative value of his testimony.

Even if such were not the case, the AAO would still find the evidence of record insufficient to establish that the petitioner and T-O- shared a joint residence. The affidavits of record are insufficiently detailed to be of any probative value toward inquiry into whether the couple shared a joint residence.

Nor does the residential lease covering the period from March 20, 2001 through March 20, 2002 establish that the couple shared a joint residence. Although the petitioner has claimed, alternately, that the joint residence ended in 1999, January 2001, and April 2001, two of those three alternative dates had passed by the time this lease was signed. Given the petitioner's inconsistent account of when the alleged joint residence ended, the AAO finds this document useless toward establishing the claimed joint residence.

Nor do the couple's 2001 and 2002 income tax returns demonstrate the claimed joint residence. If the joint residence ended in 1999, as claimed by the petitioner at the time of his 2004 interview, both tax returns were filed after the claimed joint residence ended and are therefore not evidence of such joint residence. If the joint residence ended in January 2001, as claimed by the petitioner at the time he filed the Form I-360, then the 2002 tax return would not serve as evidence of such joint residence. Given the inconsistency in the petitioner's testimony as to when the purported joint residence ended, the AAO will accord no weight to either of these documents.

Nor will the AAO accord any weight to the August 3, 1998 notice from the Internal Revenue Service regarding the couple's 1997 tax return. Although this letter is addressed to both the petitioner and T-O-, the AAO notes that in this letter the agency informed the petitioner that the social security number provided for T-O-, which was the same social security number provided to the legacy Immigration Naturalization Service at the time the Form I-130 was filed, did not match T-O-'s name. It is unclear to the AAO why, if the couple were actually living together, the 1997 tax return would have been filed with an incorrect social security number.

Nor do the utility statements that name both T-O- and the petitioner as sharing an account establish that the two shared a joint residence, as the AAO notes that adding individuals to utility accounts is accomplished easily. Nor does the bank statement establish that the couple actually shared a joint residence. First, the AAO notes that since only one statement was submitted – the opening statement – it is unclear whether T-O- actually accessed this account. This lack of clarity is compounded by both the relatively low balance of the account and the fact that the account saw virtually no activity. Second, the AAO notes that it does not appear as though T-O- would have even been able to access the account had she desired to do so, as the statement contains the letters “ITF” before T-O-'s name. Generally, the acronym “ITF” stands for “in trust for,” which indicates this bank account was actually a type of informal revocable trust to which T-O- did not have access (except upon the death of the petitioner), and the petitioner could revoke any point.²

With regard to the petitioner's testimony of record, the AAO emphasizes again that such testimony is inconsistent with regard to when the alleged joint residence concluded – the petitioner has stated, alternatively, that it ended in 1999, that it ended in January 2001, and that it ended in April 2001. Even if such were not the case, the AAO would still find the petitioner's testimony inadequate, as his testimony is insufficiently detailed with regard to such joint residence. For example, the petitioner does not discuss the couple's residence, their furnishings, or any other indicia of a joint residence in any meaningful detail. The AAO finds that such lack of detail, combined with the unresolved inconsistencies of record, to render the petitioner's testimony inadequate to establish that he and T-O- shared a joint residence.

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with T-O-, 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 T-O- subjected him to battery or extreme cruelty. In his 2002 self-affidavit, the petitioner stated that T-O- was jealous; threatened his immigration status; called him names and humiliated him; stayed out late; had an aggressive attitude; threw away presents; refused to have a child with him; threw away his beer; withdrew money from his bank account; threw him out of the house; threw food at him; destroyed his clothing; hit him; and

² The website of the Federal Deposit Insurance Corporation contains a brief description of informal revocable trusts, including “in trust for” accounts, at <http://www.fdic.gov/Deposits/Insured/ownership4.html> (accessed January 28, 2010).

threatened his parents. In his January 12, 2009 self-affidavit, the petitioner stated that his T-O- hit him and threatened him every day.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to revoke approval of this petition, as the record of proceeding does not establish that the petitioner was subjected to battery or extreme cruelty. The AAO finds the petitioner's testimony regarding the alleged abuse vague and lacking in detailed, probative information regarding specific instances of abuse.

The generalized 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 T-O-'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. The petitioner has failed to establish that her actions rose 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 has the petitioner established that T-O-'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. 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 petitioner has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. The petitioner has failed to establish that his wife 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 T-O- in good faith. The AAO first notes the petitioner's failure to establish that he shared a joint residence with T-O-. However, even if the petitioner had established that he and T-O- had shared a joint residence, and there were no questions with regard to the credibility of his evidence, the AAO would still decline to enter a finding that the petitioner had made an adequate demonstration that he had entered into marriage with T-O- in good faith.

Beyond the general statements that he met T-O- in April 1996 and married in March 1997, the record lacks any probative information with regard to the intentions of the petitioner at the time he entered into marriage with T-O-. For example, the record lacks details regarding the couple's first meeting; the petitioner's first impressions of T-O-; their decision to date; their first date; their courtship; their decision to marry; or their wedding. Such information would allow the AAO to examine the petitioner's intentions upon entering into the marriage. The petitioner's general statements are significantly lacking in relevant detail and thus are not subject to a thorough evaluation of the petitioner's intent. The evidence of record fails to demonstrate that the petitioner entered into marriage with T-O- 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 shared a joint residence with T-O-; that T-O- subjected him to battery or extreme cruelty; or that he married T-O- in good faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii). Accordingly, the AAO will not disturb the director's decision.

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. Approval of this petition is revoked.