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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

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FILE: [Redacted]
EAC 08 012 50334

Office: VERMONT SERVICE CENTER Date:

MAY 17 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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 for the petitioner's failure to establish that he entered into the marriage in good faith.¹

On appeal, counsel submits additional documents.

The AAO concurs with the director's determination that the petitioner has not established that the petitioner entered into the marriage in good faith.

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 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

¹ The director referenced the petitioner's previously filed Form I-360, the deficiencies in that record, the director's Notice of Intent to Deny (NOID) that petition, and the director's June 20, 2006 denial of that petition because the petitioner had not established that he had entered into the marriage in good faith. The director found that the petitioner had not submitted new information in the current proceeding demonstrating that he was eligible for this benefit and denied the instant petition on that basis.

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 under section 204(a)(1)(A)(iii) of the Act are further explained 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Uruguay, although he indicates that he resided for a significant length of time in Argentina. He married [REDACTED]² a United States citizen, in Connecticut on December 20, 2003. The record includes the petitioner's Divorce Judgment dissolving the marriage on January 23, 2007. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on October 9, 2007. The director issued a request for further evidence on December 6, 2008. As observed above, the AAO concurs with the finding of the director that the petitioner failed to establish that he entered into his marriage in good faith. Beyond the decision of the director, the AAO determines that the petitioner has not established that he was battered or subjected to extreme cruelty by his spouse during their marriage and thus that he had a qualifying relationship with a United States citizen.

Good Faith Entry into Marriage

At the time of filing, the petitioner submitted an August 21, 2007 personal affidavit stating that he was introduced to [REDACTED] by her mother who was a client at the hair salon for which he worked. The petitioner noted that he met [REDACTED] around September or October of 2002 and that they discovered that

² Name withheld to protect individual's identity.

they had a mutual love for music, jazz, and playing the guitar. The petitioner stated that they frequently went out for dinner and to concerts and the movies. The petitioner also stated that he had a very close relationship with [REDACTED] and her family and that he traveled with [REDACTED] and her family to see the races in Indianapolis in the summer of 2003. He noted that as he was renting a room from a friend, he and [REDACTED] would rent a room in a hotel to stay during the weekends. The petitioner indicated that because they were spending so much time together, they decided to marry and that he would move to [REDACTED]'s mother's house where she rented the upper floor. The remaining portion of the petitioner's initial affidavit related to [REDACTED]'s immediate change in behavior once the couple married and which culminated in the petitioner being thrown out of the claimed marital residence in May 2004.

The petitioner also provided copies of three retail receipts and a Sprint statement showing his name at the address of the claimed marital residence and photographs of the couple on three occasions including their wedding. The petitioner also provided a copy of an insurance card issued by American MedOne showing his member number and a client number. The record also includes a receipt listing [REDACTED]'s name at the claimed marital residence.

In response to the director's RFE, the petitioner again provided several photographs of the couple's marriage ceremony and several photographs at another couple's wedding ceremony. In addition, the petitioner submitted several affidavits. [REDACTED] in a January 22, 2009 affidavit, declared that the petitioner introduced [REDACTED] to him in 2002, that they spent time together on various occasions, including holidays such as Christmas and Thanksgiving, that the couple decided to live together and pursue their future through marriage, and that he was a witness to their marriage ceremony. In a February 17, 2009 affidavit, [REDACTED] declared that she had known the petitioner since 2002 and although she never met [REDACTED] she can say with complete conviction that the petitioner married [REDACTED] in good faith. In a February 20, 2009 affidavit, [REDACTED] declared that she had known the petitioner since July 2003, as the manager of the salon where he worked, and that she recalled that he told everyone at the salon that he was marrying [REDACTED] and that the salon employees took up a monetary collection to buy the couple a wedding present.

The petitioner, in a February 19, 2009 affidavit in response to the director's RFE, explained that as he lived with his former spouse at her mother's house and paid rent, he did not pay the rent directly to his mother-in-law, and that he assumed that all the utility bills were in his former spouse's mother's name. The petitioner also noted that although he had discussed opening a joint bank account with his former spouse they never did so because his former spouse's money was commingled with her mother's money as they operated a business together. The petitioner noted that his mother-in-law was in Argentina for several months after the marriage and that his former spouse could not access her funds jointly held with her mother when her mother was not in the country.

As observed above, the director denied the petition on April 23, 2009 noting that the petitioner had not provided new or different evidence than that provided with the previously filed petition and denied the instant Form I-360 petition.

On appeal, counsel for the petitioner asserts that the petitioner explicitly stated how he met [REDACTED] and submitted documentation including copies of receipts showing he lived at the same address as his former spouse. Counsel also references the petitioner's explanation regarding why he and his former spouse do not have joint documents as well as the photographs showing the couple together on more than one occasion. Counsel also notes the medical insurance card previously provided. Counsel submits a May 9, 2009 letter from the Nationalway Healthcare Association that lists the petitioner's former spouse's name and her participant identification number, the name of the benefit plan, and also shows that the petitioner is a dependent on the plan. The AAO observes that neither [REDACTED]'s participant plan number nor the name of the plan is listed on the petitioner's insurance card. Counsel asserts that United States Citizenship and Immigration Services (USCIS) disregarded the regulations that state that any credible evidence will be considered to establish a good faith marriage. Counsel urges a review of the evidence in the record and asserts that the evidence establishes that the petitioner entered into the marriage in good faith.

The AAO acknowledges that section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of" USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines at 8 C.F.R. § 204.2(c)(2)(vii) lists examples of the types of documents that may be submitted to demonstrate good faith and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

Upon review of the evidence in the record, the AAO does not find that the petitioner has provided substantive information to establish that he entered into the marriage in good faith. Other than stating that the couple enjoyed similar things and went out together, the petitioner does not provide the necessary detail to establish that he entered into the marriage in good faith. He provides a general statement that is sufficiently vague as to not lend itself to an evaluation of his credibility. The record does not include a complete discussion of events, interactions, or the circumstances of the couple's life prior to the marriage or during the marriage other than as it relates to [REDACTED]'s mental health issues. For example, although the petitioner claims that the couple would rent a hotel room the petitioner does not state when or how often this occurred or provide any other detail. The affidavits submitted on the petitioner's behalf also fail to provide any probative details regarding the petitioner's relationship with [REDACTED], such as a description of their interactions with each other, other than as it relates to the alleged abuse. In addition, although the affiants state their belief that the

petitioner married [REDACTED] in good faith, the affiants do not provide any probative details to assist in substantiating their belief that the petitioner's intent was to establish a *bona fide* marriage with his former spouse. These affidavits do not establish the petitioner's own good faith in entering into the marriage.

As documentary evidence, the petitioner submitted photographs of the wedding ceremony and photographs taken at another couple's wedding ceremony; however, these photographs depict a couple of occasions when the couple appeared together. The photographs of the petitioner's wedding ceremony do not document the petitioner's feelings or reasons for marrying [REDACTED] and do not provide evidence of the requisite intent that would establish that the entry into the marriage was made in good faith. In addition, the petitioner does not provide any substantive evidence of the trip to Indianapolis or the petitioner's trip to New York on his honeymoon. There are no probative details about the petitioner's initial relationship with [REDACTED] and the subsequent interactions with [REDACTED] that demonstrate that the petitioner's intent upon entering the marriage was to establish a life together. The AAO has reviewed the receipts submitted and notes that while the receipts show that the petitioner and [REDACTED] used the same address for a limited period of time, the receipts provided are not indicative of the couple establishing a life together. As observed above, the petitioner's insurance card does not identify his former spouse as the principal carrier of the medical insurance listed on his insurance card. The AAO further observes that the director requested that the petitioner provide further indicia of his good faith intent in entering into the marriage and had been advised of the types of documentation that would assist in demonstrating the *bona fides* of the marriage. The petitioner failed to provide such information and provides for the first time on appeal a letter from the Nationalway Healthcare Association indicating that he had been placed on his former spouse's medical insurance. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have been submitted in response to the director's request for evidence. *Id.* Moreover, even if the letter is considered, the AAO again notes that the information on the letter regarding the petitioner's former spouse's participant number does not coincide with the information on the petitioner's medical insurance card.

As discussed above, the record contains scant documentary evidence to support a finding that the petitioner entered into his marriage in good faith. The AAO acknowledges the petitioner's explanation that he and his spouse had not yet opened up a joint bank account and that he paid his portion of the rent in cash to his spouse who then transferred it to her mother and that the couple did not have utility or other bills. However, while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on his behalf also fail to support a finding that he entered into this marriage in good faith. It is not just that the affidavits submitted are similar, but rather it is the generality and bareness of detail included in the affidavits that fail to establish the affiant's actual knowledge and legitimacy of the marriage. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to



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establish that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied for the above stated reason, 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.