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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:



Office: VERMONT SERVICE CENTER

Date:

OCT 06 2010

IN RE:



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 service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion to reopen will be granted. The AAO will affirm its dismissal of the appeal, and the petition will remain denied.

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 petitioner filed the instant Form I-360 on January 7, 2008. The director subsequently issued a request for additional evidence to which the petitioner, through counsel, submitted a timely response. The director denied the petition on October 16, 2009, on the basis of his determination that the petitioner had failed to establish that he had shared a joint residence with his wife and that he married her in good faith. The AAO dismissed counsel's timely appeal on June 18, 2010.

The petitioner filed the instant motion to reopen and reconsider on July 20, 2010. On motion, the petitioner submits a letter and additional evidence. The petitioner's submission does not meet the filing requirements for a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part, the following:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner's motion does not meet these requirements. First, the petitioner alleges no incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Furthermore, because the petitioner's motion is dependent upon the evidence he submits with the instant filing, he fails to establish that the AAO's decision was incorrect based upon the evidence of record at the time that decision was issued. Accordingly, the motion to reconsider is dismissed. The petitioner's submission meets the requirements for a motion to reopen, however, because he presents new assertions supported by additional evidence. See 8 C.F.R. §103.5(a)(2). Accordingly, the motion to reopen is granted.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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.

* * *

- (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 standard and 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.

* * *

- (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 pertinent facts and procedural history of this case were set forth in the AAO's June 18, 2010 decision. As such, the AAO will only repeat such facts as necessary here. The petitioner, a citizen of Saint Vincent, married N-H-,¹ a citizen of the United States, on September 12, 2006. He filed the instant petition on January 7, 2008, the director denied it on October 16, 2009, and the AAO dismissed a subsequent appeal on June 18, 2010.

As the AAO fully analyzed the evidence of record prior to issuing its June 18, 2010 decision, the AAO need only consider the evidence submitted into the record after that date, which includes the following:

- An updated statement from the petitioner, dated July 12, 2010;
- A copy of temporary protective order issued by the Court of Common Pleas of Philadelphia County, Pennsylvania against the petitioner on October 1, 2007;
- A partial copy of an October 1, 2007 Notice of Hearing and Order in the Court of Common Pleas of Philadelphia County, Pennsylvania (case number [REDACTED]), regarding a hearing to take place on October 5, 2007;
- A partial copy of an October 1, 2007 Notice of Hearing and Order in the Court of Common Pleas of Philadelphia County, Pennsylvania (case number [REDACTED]), regarding a hearing to take place on October 5, 2007;
- A copy of an October 5, 2007 order issued by the Court of Common Pleas of Philadelphia County, Pennsylvania vacating the October 1, 2007 temporary protective order issued against the petitioner;
- An undated and largely-blank "Complaint or Incident Report"; and
- Photographs of the couple's wedding day.

Joint Residence

The first issue before the AAO on motion to reopen is whether the petitioner has established that he shared a joint residence with N-H-. In its June 18, 2010 decision, the AAO noted numerous inconsistencies between the petitioner's testimony and the evidence of record regarding this issue. For example, although the petitioner stated that he and N-H- moved into an apartment located at [REDACTED] after their September 12, 2006 wedding, the AAO noted that N-H- signed a lease for that apartment on January 31, 2006, and had claimed that only one individual would be living there. The evidence of record, therefore, contradicted the petitioner's testimony and indicated that N-H- was already living at this address as early as January 31, 2006. Moreover, she also claimed that only one individual was living in the

¹ Name withheld to protect individual's identity.

apartment in renewals she signed on October 31, 2006 and May 31, 2007. The AAO found that because the petitioner failed to explain these inconsistencies, he had failed to establish that he and N-H- had resided together.

In his July 12, 2010 statement submitted on motion, the petitioner states that "I would admit my wife had the apartment as much as nine months before the wedding," but claims that he and N-H- did not move into that apartment because they had no furniture. According to the petitioner, after N-H-'s father gave the couple furniture as a wedding present, they moved into the apartment. The petitioner also cites the temporary protective order that N-H- obtained against him, which ordered him not to abuse, harass, stalk, or threaten N-H-, and ordered him "evicted and excluded" from the [REDACTED] address. As noted by the petitioner, this order also named him as the "current or former cohabitant" of N-H-. According to the petitioner, this demonstrates that he and N-H- shared a residence.

The AAO finds the petitioner's attempted clarification of the inconsistencies identified by the AAO with (1) the statement that N-H- rented an apartment for nine months, but did not live in it; and (2) documentation from court proceedings regarding a protective order issued against him; deficient. In sum, the evidence submitted by the petitioner on motion does not resolve the inconsistencies identified by the AAO in its June 18, 2010 decision, and it does not establish that he and N-H- resided together.

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with N-H-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The second issue before the AAO on motion is whether the petitioner has established that he married N-H- in good faith. In its June 18, 2010 decision, the AAO found that the inconsistencies of record regarding the couple's alleged joint residence, coupled with the petitioner and his affiants' failure to submit detailed, probative information regarding his shared experiences with N-H-, apart from the abuse, precluded a finding that the petitioner had married N-H- in good faith.

In his July 12, 2010 statement submitted on motion, the petitioner states that he took N-H- to visit some of his relatives in the United States and that he "will always love her." The petitioner's brief assertions do not provide probative, detailed information sufficient to establish that he married N-H- in good faith. While the pictures submitted on motion document, they alone do not demonstrate that the petitioner married N-H- in good faith. The petitioner has failed to establish that he entered into marriage with N-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On motion, the petitioner has failed to establish that he shared a joint residence with N-H- or that he married her 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), and this petition must remain denied.

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 director's decision of October 16, 2009 and the AAO's decision of June 18, 2010 are affirmed. The petition remains denied.