

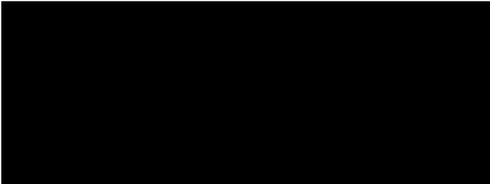
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9



DATE: APR 01 2011 Office: 

FILE: 

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:

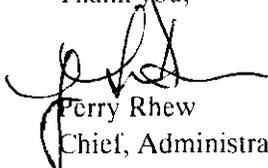


INSTRUCTIONS:

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 the \$630 fee. 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 Vermont Service Center director (“the director”) 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 failure to establish that the petitioner entered into marriage with his wife in good faith, resided with her and that he was a person of good moral character. On appeal, counsel submits a brief and additional evidence.

Applicable Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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:

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(vi) *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.

Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The petitioner is a citizen of [REDACTED] who entered the United States as a nonimmigrant visitor on November 22, 2002. On May 12, 2006, he married a U.S. citizen in [REDACTED]. The petitioner's wife subsequently filed an alien relative petition (Form I-130) on his behalf, which was denied on September 17, 2009 along with the petitioner's application to adjust status (Form I-485). On the same day, the petitioner was served with a Notice to Appear in removal proceedings.¹

The petitioner filed the instant Form I-360 on September 22, 2009. The director subsequently issued two requests for further evidence (RFE) that the petitioner was a person of good moral character, that he resided with his wife and married her in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage. The petitioner filed his first response on May 17, 2010, which the director found sufficient to establish the requisite battery or extreme cruelty, but not joint residence, good-faith entry into the marriage and good moral character. The director denied the petition on the latter three grounds. Counsel submitted a second, untimely response to the RFE in June 2010.

¹ The petitioner remains in removal proceedings before the [REDACTED] Immigration Court and his next hearing is scheduled for [REDACTED].

Although the director did not address the additional evidence submitted with that response, we have considered the submission on appeal.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the evidence submitted below and on appeal fail to overcome the director's determinations. Beyond the director's decision, the petitioner also has not established that his wife subjected him to battery or extreme cruelty during their marriage.

Joint Residence

On the Form I-360, the petitioner did not list any period of joint residence or shared address with his wife. In his first affidavit, the petitioner stated that he began to live with his wife on an unspecified date before their marriage. He recounted that they first lived together in an apartment in [REDACTED] for "approximately one year" and then moved to an apartment in [REDACTED]. The petitioner explained that in April 2007, he moved to [REDACTED] and his wife joined him on an unspecified date. The petitioner stated that they lived together at a house in [REDACTED] for a year and a half until his wife left in December 2008. In addition to failing to provide the dates of his shared residences with his wife, the petitioner did not describe any of their dwellings or shared residential routines in detail.

In his second affidavit, the petitioner stated that "there was a clerical error as to the dates" that he lived with his wife in his first affidavit, but he did not specify the error or provide any dates of his residence with his wife. The petitioner stated that their first apartment in [REDACTED] had two rooms and they shared a kitchen with the landlord. However, his description is inconsistent with the blank application package he submitted from [REDACTED] which included floor plans of one-bedroom and three-bedroom apartments, neither of which indicate a shared kitchen with another unit. The petitioner briefly recounted that his wife was neat and that they split the household chores, but he provided few probative details regarding any of their shared residences or living routines. Consequently, the petitioner's statements alone are insufficient to demonstrate that he resided with his wife during their marriage.

The remaining, relevant evidence also fails to establish that the petitioner resided with his wife. The petitioner submitted copies of documents addressed to him at his residences in [REDACTED] but because the documents were sent to him individually, they do not show that his wife resided with him. The record contains a photocopy of a sales receipt listing the petitioner's address in [REDACTED] and dated April 5, 2008. Although the petitioner's wife's name is also listed on the receipt, it is handwritten in uppercase letters to the side of the petitioner's name and appears to have been added after the receipt was issued. The petitioner submitted copies of letters addressed to his wife at the [REDACTED] address, but the letters are addressed to her individually and concern her eligibility for food stamps based on a household size of six, in contrast to the petitioner's statement that he and his wife lived alone without their children. In addition, the letters to the petitioner's wife are dated in April 2007, the same month the petitioner stated that he moved to [REDACTED].

The letters from the petitioner's landlord and housemates are also insufficient to demonstrate that he resided with his wife in [REDACTED]. [REDACTED] the petitioner's landlord, stated that the petitioner had rented a room at her house for three years and that his wife had lived with him for a year and a half. [REDACTED] recounted that she often heard the petitioner's wife yelling at him

until she moved away on or about December 2008. The petitioner's housemates, [REDACTED] and [REDACTED] briefly affirmed that they lived in the same house with the petitioner and his wife during an unspecified period in 2007 and that they heard the petitioner's wife yelling at him, but they provided no further, probative information regarding the former couple's shared residence.

The petitioner submitted copies of federal and state income tax refund checks jointly addressed to the petitioner and his wife at the [REDACTED] address. However, two of the checks are refunds for 2006, when the petitioner stated that he and his wife resided in [REDACTED]. Moreover, although the petitioner and his wife received tax refunds for 2006 through 2008, the record shows that they did not file their returns until 2009, after they separated. The federal checks are dated in May 2009 and the [REDACTED] checks are dated in June 2009. The [REDACTED] 2007 [REDACTED] [REDACTED] jointly addressed to the petitioner and his wife also states that their application was not received until April 15, 2009. Given these contradictions, the evidence of the petitioner's joint tax filings with his wife do not demonstrate that they resided together in [REDACTED].

On appeal, counsel simply asserts that the petitioner's statements, supporting affidavits and documentation show that he lived with his wife. Counsel provides no explanation or additional evidence to clarify the discrepancies in the purported dates of the petitioner's residence with his wife and the contradiction between his statements and their tax returns. These unresolved inconsistencies detract from the credibility of the petitioner's claim and the relevant evidence fails to demonstrate that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into the Marriage

In his affidavits submitted below, the petitioner stated that he met his wife in February 2006 at a bus stop in [REDACTED] when she borrowed his cellular telephone. He recounted that they exchanged telephone numbers, soon started dating and moved into an apartment together. The petitioner explained that while they were dating, he told his wife that he was not a legal resident, but she told him not to worry and asked him to marry her. The petitioner did not further describe their courtship, decision to marry, wedding, shared residence and experiences in any probative detail.

In his affidavit submitted on appeal, the petitioner describes in detail how he met his wife, their first date, their courtship and wedding. The remaining, relevant evidence does not, however, support the petitioner's claim that he married his wife in good faith. In their letters submitted on appeal, the petitioner's former housemates, [REDACTED] and [REDACTED] briefly state that the petitioner and his wife "seemed like a very nice couple," but that "they always kept to themselves." [REDACTED] and [REDACTED] recount hearing the petitioner's wife yell at him, but they do not describe observing any other interactions of the former couple or the petitioner's treatment of his wife. The petitioner's landlord, [REDACTED] also confirmed that the former couple lived together and referred to each other as husband and wife, but she provided no probative information regarding their relationship, apart from the alleged abuse.

The relevant documentation also does not demonstrate that the petitioner married his wife in good faith. The photographs of the petitioner and his wife at their wedding and on three other, unspecified occasions are insufficient to establish the petitioner's intentions in entering the marriage. The record also does not indicate that the petitioner and his wife shared any joint financial assets and liabilities or other marital responsibilities. In all three of his affidavits, the petitioner stated that he gave all his

money to his wife (except for the money he gave to his daughter), but he submitted statements of his individual bank account indicating that he opened the account in January 2007 during their marriage. Apart from a single withdrawal of [REDACTED] from the account by the petitioner's wife on July 21, 2007, the record contains no evidence that the petitioner and his wife used the account for expenses commensurate with a marital household.

On appeal, the petitioner submits an affidavit from [REDACTED] a tax preparer, who attests that she met with the petitioner and his wife in 2008 and 2009 to prepare their joint tax returns and states that they "appeared to be an average couple" and she "had no suspicion as to their marital status or any other information provided by them." The last sentence of [REDACTED] affidavit states: "Please mention if [the petitioner] seems fearful of deportation and the devastating consequences to his relationship with his daughter/ [sic]." This sentence indicates that [REDACTED] affidavit was written by someone else. In addition, the record shows that the joint tax returns of the petitioner and his wife were not filed until April 2009, after they separated and that they received an income tax refund from the state of [REDACTED] for 2006 when the petitioner attests they were living in [REDACTED]. [REDACTED] assertion that she met the petitioner and his wife in 2009 is also inconsistent with the petitioner's statement in his July 22, 2010 affidavit that he had not seen his wife since she left him in December 2008. [REDACTED] statements lack credibility given these inconsistencies combined with the indication that someone else wrote her affidavit.

On appeal, counsel asserts that the relevant evidence shows that the petitioner "had a good faith marriage" because the petitioner and his wife "lived together . . . [and] filed taxes jointly." Counsel's brief assertion is not supported by the record. As discussed in the preceding section, the relevant evidence does not establish that the petitioner resided with his wife. Counsel also does not acknowledge that the petitioner and his wife filed their tax returns after their separation. Counsel's brief, unsupported assertion and the evidence submitted on appeal fail to overcome the director's determination that the petitioner did not enter the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Primary evidence of a self-petitioner's good moral character is the self-petitioner's affidavit and state-issued criminal background checks or local police clearances from every location where the self-petitioner has resided for at least six months prior to the date the petition is filed. 8 C.F.R. § 204.2(c)(2)(v). In this case, the relevant three-year period is from September 2006 to September 2009. On his Form G-325A, Biographic Information, which the petitioner signed on November 20, 2006, the petitioner stated that he had resided in [REDACTED] since January 2004 and in his affidavits submitted in these proceedings, the petitioner indicated that he moved to [REDACTED] before his daughter's birth in 2005 and remained there until April 2007. However, the petitioner did not submit any criminal background check issued by the relevant authority in [REDACTED] or local police clearances from the cities where he resided in that state. The petitioner attested to his good moral character in his affidavits and submitted a local police clearance from his residence in [REDACTED] as well as support letters from several individuals. That evidence does not, however, overcome the requirement for a background check or local police clearances from [REDACTED].

Although the director notified the petitioner of this deficiency in his RFEs and final decision, the petitioner fails to submit the requisite evidence on appeal. The petitioner does not indicate that such

evidence is unavailable or unobtainable. Instead, in his affidavit submitted on appeal, the petitioner stated that he had requested a criminal background check from the Federal Bureau of Investigation (FBI) and would submit the results, but to date, we have received no further evidence from the petitioner. Rather than addressing this evidentiary deficiency on appeal, counsel simply asserts that the petitioner has not been convicted of a crime, has filed his taxes every year and is an active member of his community. Without a credible explanation of why evidence of the petitioner's good moral character during his residence in [REDACTED] is unavailable, counsel's assertions and the other, relevant evidence are insufficient to overcome this regulatory requirement. See 8 C.F.R. § 204.2(c)(2)(v). Accordingly, the petitioner has not established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Battery or Extreme Cruelty

Beyond the director's decision, the relevant evidence also does not demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. In his affidavits, the petitioner briefly stated that his wife once hit him with a broom after he returned home late and pushed him and slapped him twice. The petitioner did not describe any of these incidents in probative detail. The petitioner also recounted that his wife was controlling and manipulative, cursed him, threatened to report him to immigration authorities, called him derogatory names, ridiculed his English and spent his money without consulting him. The petitioner did not, however, specifically describe how his wife controlled him or how her maltreatment was part of a cycle of violence or otherwise constituted extreme cruelty.

The remaining, relevant evidence also fails to establish the requisite battery or extreme cruelty. The petitioner's landlord, [REDACTED] stated that when his wife lived with him, the petitioner was withdrawn and rarely spoke to anyone and that she heard the petitioner's wife yelling and cursing him. [REDACTED] does not, however, provide any further, probative information sufficient to demonstrate that the petitioner's wife subjected him to extreme cruelty. The petitioner's former housemates, [REDACTED] also confirm that they heard the petitioner's wife yelling at him, using humiliating words and threatening to leave him, but they do not describe any particular incident in detail and their brief statements are also insufficient to demonstrate that the behavior of the petitioner's wife amounted to extreme cruelty.

The record contains a psychiatric evaluation of the petitioner by [REDACTED] based on two interviews with the petitioner in May 2010, nearly a year and a half after the petitioner and his wife separated. [REDACTED] report of the alleged abuse differs from the petitioner's own account in his affidavits. [REDACTED] repeated the petitioner's assertion that his wife once hit him with a broom, but adds that his wife "caus[ed] a skin laceration," an injury that the petitioner himself never mentioned. [REDACTED] also stated that the petitioner "considered ending his own life" due to his wife's abuse, but the petitioner himself did not state that he ever contemplated suicide during his marriage. [REDACTED] diagnosed the petitioner with Adjustment Disorder with Depressed Mood caused by his wife's abuse. However, [REDACTED] also diagnosed the petitioner with Posttraumatic Stress Disorder based upon his experiences in [REDACTED] and identified his present stressors as his separation from his wife and his pending immigration proceedings. Although we do not question [REDACTED] expertise, her evaluation is of little probative value given the time elapsed between her evaluation and the petitioner's separation from his wife and the discrepancies between the petitioner's own statements and her account of the abuse and its effects on the petitioner.

On appeal, counsel summarizes the petitioner's account of his wife's behavior and asserts that the petitioner was subjected to both battery and extreme cruelty. Counsel does not, however, cite any relevant evidence in support of this claim or provide any substantive analysis of the credibility of the relevant evidence or how the purported behavior of the petitioner's wife was part of a cycle of violence or otherwise constituted battery or extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In sum, the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner's 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.

Conclusion

On appeal, the petitioner has failed to overcome the director's grounds for denial and has not established that he entered into marriage with his wife in good faith, resided with her and that he is a person of good moral character. Beyond the director's decision, the petitioner has also not demonstrated that his wife subjected him to battery or extreme cruelty during their marriage.² The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and the petition will remain denied for these four reasons with each considered an independent and alternative basis for denial.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).