

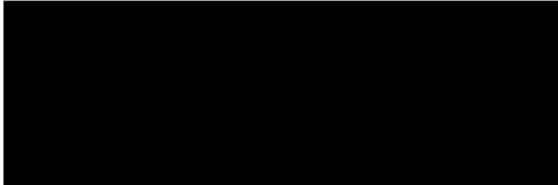
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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FILE:

Office: VERMONT SERVICE CENTER

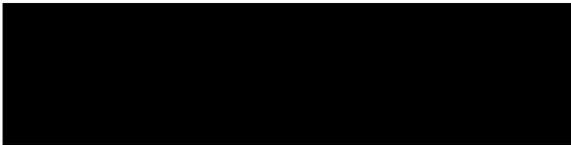
Date:

FEB 08 2011

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:



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 \$630. 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 petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

The petitioner seeks immigrant classification pursuant to 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 his United States citizen spouse.

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 based on his or her relationship to the abusive spouse, 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 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:

(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 under section 204(a)(1)(A)(iii) of the Act are set forth 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.

* * *

(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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Zambia. He entered the United States on or about September 7, 2001 as a B-2 visitor. The petitioner claims that he later changed his nonimmigrant status to that of an F-1 student but United States Citizenship and Immigration Services (USCIS) records do not show that USCIS ever approved a change in the petitioner's status.¹ On December 30, 2004, the petitioner married N-B-², the claimed abusive United States citizen. On or about April 29, 2005, N-B- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-130 and Form I-485 remain pending. On July 13, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On March 3, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had jointly resided with N-B-, that he had been subjected to battery or extreme cruelty perpetrated by N-B-, and that he had entered into the marriage in good faith. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, and brief in support of the appeal.

Residence

The petitioner in this matter indicates on the Form I-360 that he jointly resided with N-B- from December 2004 to May 2009. The petitioner also declared in his initial statement that he met N-B- in June 2004 and that he and N-B- moved in together at an apartment on [REDACTED] in December 2004. On the petitioner's Form G-325A, Biographical Information sheet, signed February 23, 2005, the petitioner indicated that he had resided at the [REDACTED] address since March 2004. The record also included:

- A Texas Department of Public Safety Identification Card issued to N-B- on March 8, 2005 showing her address as the [REDACTED] address;
- A copy of an initialed but unsigned lease for the [REDACTED] premises listing the petitioner and N-B- as the tenants for a term beginning March 2004 for one year;
- A utility bill dated January 25, 2005 issued to the petitioner and N-B- at the [REDACTED] address for service from November 9, 2004 to December 9, 2004;
- A receipt for furniture leased to the petitioner and N-B- for different premises on [REDACTED] with a delivery date of March 19, 2005; and,
- A July 6, 2009 statement of [REDACTED] who declared that he visited the petitioner and N-B- at premises on [REDACTED] and had Thanksgiving dinner

¹ On February 3, 2004, [REDACTED] terminated the petitioner's F-1 status in [REDACTED] for the petitioner's failure to enroll.

² Name withheld to protect the individual's identity.

with them in November 2007.

In response to the director's RFE, the petitioner indicated that he had mistakenly stated that he and N-B- moved in together in December 2004 when in actuality they moved in together in March 2004. The petitioner provided the affidavits of [REDACTED] [REDACTED] declared that she is the petitioner's first cousin and has known N-B- since 2004 and had visited the couple at their home on [REDACTED] [REDACTED] declared that she had known the petitioner since 2003 and frequently visited the couple at their apartment on [REDACTED] [REDACTED] declared that she is the sister of N-B- and she had visited the couple when they resided on [REDACTED]

The director denied the petition determining that: the petitioner had not presented consistent evidence regarding his residence with N-B-; that the utility bill provided was for service that predated the claimed joint residence; the furniture lease misspelled N-B-'s name; and when attempting to explain inconsistencies the petitioner created further inconsistencies in the record.

On appeal, counsel for the petitioner referenced the petitioner's sworn statements, the lease agreement, various photographs, a temporary identification card issued to N-B-, furniture receipts, and the affidavits submitted on the petitioner's behalf. Counsel acknowledged the petitioner's inconsistencies regarding certain dates but asserted that the information submitted is sufficient to conclude that the petitioner resided with N-B-.

We disagree. The petitioner does not explain why he changed his testimony to indicate that he and N-B- resided together in March 2004 when he previously indicated that he had not met N-B- until June 2004. In addition to the inconsistencies, neither the petitioner's testimony nor the testimony of his friends provides probative information regarding the couple's claimed joint residence. The petitioner does not describe their home furnishings, their neighbors, any of their jointly-owned belongings, or any of their daily routines within the residence. The affiants who submitted statements on the petitioner's behalf also fail to describe the petitioner's claimed joint residence, when or for how long they visited the couple, or the couple's routines that they witnessed during their visits. The record lacks probative testimony establishing that the couple jointly resided together during their marriage.

Upon review of the documentary evidence submitted, the lease does not include N-B-'s signature and is for a time period beginning prior to the date the petitioner and N-B- met, according to the petitioner's initial testimony. Similarly, the utility bill submitted is for service that predates the petitioner's initial claimed joint residence. As noted by the director, the furniture receipts misspelled N-B-'s name and as the director noted the delivery address is for a different location on [REDACTED]. The photographs of the couple do not include any information regarding the couple's claimed joint residence. In addition, receiving mail at a particular address is insufficient to establish that the individual resided at the address.

Upon review of the totality of the evidence in the record, including the petitioner's testimony and the testimony submitted on his behalf, the petitioner has failed to establish that he jointly resided with N-B- during the marriage. The record lacks consistent, detailed information regarding the

petitioner and N-B-'s alleged joint residence.

Abuse

In the petitioner's initial statement he indicated that the first seven months of his marriage were very good but then his former wife changed and she began to ignore him or would respond unreasonably when he asked what they were having for dinner. The petitioner noted that she called him derogatory names, even in the presence of her children, family, and friends. The petitioner also stated that N-B- started questioning him about places he would go and forbade him to send money to his child in Zambia. The petitioner noted that: the genesis of their problems began when the father of N-B-'s children started coming to the marital home; N-B- would lock the doors and he would later discover that the father of N-B-'s children was in the home; she would verbally abuse him, destroy his personal property, and throw objects at him; and they began to have issues relating to intimate relations. The petitioner stated that N-B- stopped him from playing soccer because she believed his friends were a bad influence and his friends were scared to visit him at home because of the hostile environment he lived in. The petitioner noted that his former wife would threaten that she would withdraw her sponsorship of his immigration case and that when he asked her to go to marriage counseling to try to work things out she refused.

The petitioner also provided a June 2, 2009 letter from the [REDACTED] signed by [REDACTED] [REDACTED] noted that the petitioner received a psychosocial evaluation on May 15, 2009 and that he presented with symptoms of depression and post traumatic stress following a four-year abusive marriage. [REDACTED] noted that the petitioner completed a checklist of controlling behaviors and provided a list of the behaviors that the petitioner claimed to have been subjected to by N-B-. [REDACTED] also indicated that the petitioner described a history of abuse including pushing, throwing things, shouting, controlling behaviors and intimidation, and that his former spouse had insulted, blamed, or threatened him in front of others. The petitioner also included his petition for divorce and request for permanent injunction. The divorce record included N-B-'s signed waiver agreeing that the matter could proceed without a record of her testimony and that the petition could be decided by the court without further notice to her.

In response to the director's RFE, the petitioner provided a second personal statement in which he declared that: his former wife had an affair in the matrimonial home; she left the house for extended periods of time; she would not let his friends or family into the home; she destroyed some of his personal belongings; she threw things at him when she was angry; she called him derogatory names; and she made fun of him sexually. The petitioner noted that the Divorce Court granted his request for a permanent injunction against N-B-. The record included the petitioner's Final Decree of Divorce issued September 3, 2009 which indicated that N-B- had been found guilty of adultery and cruel treatment towards the petitioner that is of a nature that renders further living together insupportable.

The petitioner also provided the affidavits of [REDACTED] [REDACTED] declared that: she heard N-B- call the petitioner derogatory names;

she witnessed a time that N-B- locked the petitioner out of the marital home; and N-B- told the petitioner sternly that he should not bring up the topic of the father of her children coming to their home. ██████████ declared that: once when visiting the petitioner, N-B- came home later and told them to turn off the television and leave; and once when she tried to visit, N-B- told her that she did not want her company and that the petitioner was not at home. ██████████ declared that: once when visiting her sister, N-B-, her sister had the father of her children in the home; the petitioner told her of incidents where he had been locked out of the home while the father of N-B-'s children was in the home; and N-B- verbally abused the petitioner.

Based on the information in the record, the director determined that the petitioner had not demonstrated that he had been subjected to battery or extreme cruelty. On appeal, counsel for the petitioner asserts that the petitioner's sworn statements, the statements of others on his behalf, the psychological evaluation report, and the final decree of divorce establish that the petitioner was subjected to not only physical harm but extreme cruelty.

Upon review of the record, the petitioner's statements do not provide the detailed, probative evidence that establishes eligibility for this benefit. The petitioner's statements are general and lack specific information regarding the claimed abuse. Because the petitioner's statements are critical in establishing extreme cruelty or battery, his statement must include sufficient detail of specific events and incidents to result in a conclusion that he suffered abuse. In this matter, the petitioner has not provided the requisite probative detail regarding any specific event. The petitioner's claim appears to result primarily from his former spouse's adultery with the father of her children. The petitioner refers generally to his former spouse's rage, her destruction of his personal property, throwing objects at him, calling him derogatory names, and making fun of him sexually. He also references generally his former spouse stopping him from playing soccer and not letting his friends into the home. The petitioner, however, fails to provide probative detail of specific events or incidents that demonstrate that he was subjected to battery or extreme cruelty. The petitioner does not provide the requisite detail that allows an evaluation of his claims. The petitioner does not describe in detail when any of the alleged events occurred, how often they occurred, or any probative detail of the circumstances of the events. Although the petitioner references a general threat regarding his immigration status, the petitioner does not indicate that N-B-'s threat was accompanied by violence or threats of physical or mental injury.

The petitioner's divorce decree and the court's findings are of little probative value for the purpose of establishing battery or extreme cruelty. The petitioner's former spouse did not appear in court, did not offer testimony, and did not file any counterclaims, hence the decree was granted in default and the default judgment was based entirely upon the petitioner's own assertions. In addition, the petitioner has not presented any evidence that the court's reference to "cruel treatment towards the petitioner that is of a nature that renders further living together insupportable" is equivalent to the definition of battery or extreme cruelty as set out in the regulation at 8 C.F.R § 204.2(c)(1)(vi).

The statements submitted by others on behalf of the petitioner also fail to provide probative evidence of instances of battery or extreme cruelty as defined in the statute and regulation. The affiants speak generally of name calling, the petitioner's former spouse's inappropriate

relationship with the father of her children while married to the petitioner, and sometimes not being allowed in the home when they came for a visit. There is nothing in the affiants' statements that describe specific events that leads to a conclusion that the petitioner was subjected to battery or extreme cruelty as defined in the statute and regulation.

The June 2, 2009 letter signed by [REDACTED] does not provide the amount of time [REDACTED] spent with the petitioner and does not include specific information regarding events of abuse. The letter is comprised primarily of the petitioner's checkmarks on an assessment intake form and is without any substantive detail of any specific event or circumstance of battery or extreme cruelty. [REDACTED] does not provide examples of the causal relationship of specific abuse that is consistently detailed to her conclusion that the petitioner presented with symptoms of depression and post traumatic stress following a four-year abusive marriage. The evaluation prepared by [REDACTED] lacks probative value as it does not include a reasoned opinion based on facts and clinical observations of the petitioner's behavior and affect during the evaluation that support a conclusion that the petitioner presented with symptoms and characteristics of a battered spouse as those terms are set forth in the statute and regulation.

Upon review of the petitioner's testimony, the affidavits submitted on his behalf, and the evaluation, the record does not demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that N-B-'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's statements and the statements he made to others lack the consistent detail necessary to establish that N-B- subjected him to battery or that her actions constitute extreme cruelty as defined in the statute and regulation. The petitioner fails to establish that his spouse's actions were comparable to the types of 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 N-B-'s behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

Good Faith

The petitioner initially provided a general statement indicating that he met N-B- in June 2004 at a club, they spent time together, exchanged gifts and that N-B- introduced him to her family, her children, and her friends. The petitioner noted that after dating for six months they married in December 2004 and moved in together. In the petitioner's second statement he provided inconsistent information by indicating that he and N-B- moved in together in March 2004, a time period previous to the date he allegedly met N-B- in June 2004. As discussed in the section on residence above, the petitioner does not explain the significant inconsistencies in his statements

regarding meeting N-B- and moving in with her. The petitioner's statements fail to provide the detailed information necessary to assist in ascertaining the petitioner's intent when entering into the marriage. Similarly, the affidavits of other individuals who testified on his behalf do not provide substantive information regarding the interactions of the couple other than as it related to the claimed abuse. The affiants do not describe any particular incidents where they witnessed the alleged *bona fides* of the couple's claimed marital relationship.

The documentation the petitioner provided also fails to establish that the petitioner intended to establish a life together with N-B- when entering into the marriage. The photographs show that the petitioner and N-B- were together on their wedding day and on one or two other, unidentified occasions, but this evidence alone fails to establish the requisite good faith marriage. The few remaining documents submitted do not establish the petitioner's intent when entering into the marriage.

The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter the petitioner has not set forth his intent in consistent and probative detail in his statement to USCIS. In addition, the affiants' statements, submitted on behalf of the petitioner, do not disclose the circumstances or specific events witnessed that assist in establishing the petitioner's intent in entering into the marriage. Neither has the petitioner provided other evidence that would demonstrate that his intent in entering into the marriage was in good faith. Upon review of the petitioner's statements and the totality of the record, the record is bare of the essential detail necessary to demonstrate that the petitioner's intent to enter into the marriage was in good faith. The petitioner's marriage certificate confirms the marital relationship, but does not establish the petitioner's own good faith in entering into the marriage. The record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with N-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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. Here that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.