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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

B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

FEB 08 2011

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:

[REDACTED]

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 matter 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:

(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 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.

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(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 of the People's Republic of Hungary and is a national and citizen of Georgia. The petitioner entered the United States on or about August 26, 2005 on an A-2 visa. On August 28, 2006, the petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal. Asylum was not granted and the petitioner's application was referred to the Immigration Judge on October 25, 2006. On September 5, 2007, the Immigration Judge terminated the proceedings. On February 20, 2009, the petitioner married C-E¹, the claimed abusive United States citizen spouse. On November 10, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that he resided with C-E- from January 2009 to the middle of April 2009. The director issued a request for evidence (RFE) on March 24, 2010 and upon consideration of the evidence in the record, including the response to the RFE, denied the petition on August 19, 2010. Counsel timely submits a Form I-290B, Notice of Appeal or Motion, and subsequently submits a brief in support of the appeal.

Good Faith Entry into Marriage

In the petitioner's initial statement, he stated that: he met C-E- around November 2008 while working as a driver for a transportation company in Boston, Massachusetts; the second time he picked her up as her driver, he asked for her phone number; and that evening they went to the movies and for a walk and she invited him into her apartment. The petitioner noted that they became boyfriend and girlfriend and saw each other everyday, taking walks, going to museums, movies, and out to lunch and dinner. The petitioner indicated that: he proposed to C-E- at a New Year's Eve celebration; he moved into C-E-'s apartment in January 2009; they opened a joint checking account; on February 14, 2009, they visited the petitioner's friends in Philadelphia, Pennsylvania and then traveled to New York for his friend's wedding; and once they returned to Boston they scheduled their marriage for February 20, 2009. The petitioner stated that subsequent to their marriage, in March 2009, C-E- changed. The petitioner noted that he moved out of C-E-'s apartment in the middle of April 2009 and that after noticing that money was missing from one of his accounts, he closed all his accounts at the end of April 2009. The remainder of the petitioner's statement relates to his claims of abuse.

The petitioner also provided statements of friends submitted on his behalf. In the October 8, 2009 statement of [REDACTED] he declared that: he met the petitioner in the summer of

¹ Name withheld to protect the individual's identity.

2008; the petitioner moved in with him in October 2008; the petitioner introduced C-E- to him in November 2008; the couple looked very much in love with each other; the petitioner moved in with C-E- in January 2009; he attended the wedding of the couple on February 20, 2009; and the petitioner moved back in with him in April 2009 after experiencing problems with C-E-. In the October 8, 2008 statement of [REDACTED], she declared that: she has known the petitioner for 15 years; the petitioner introduced C-E- as his girlfriend in December 2008; she invited them to dinner; in December 2008 she and her family celebrated New Year's Eve with the petitioner and C-E- and the petitioner proposed to C-E-; she, her husband, and her son attended the petitioner's wedding to C-E-; and after their marriage, she and her husband got together with the petitioner and C-E- a couple of times for dinners.

The record also included: a letter from [REDACTED] dated May 7, 2009, indicating the couple has a joint checking account which was opened March 9, 2009; a checking account statement beginning March 9, 2009 through April 6, 2009, listing small withdrawals on April 1, 2009 and April 2, 2009; a second checking account statement for the same account for a time period beginning April 7, 2009 through May 6, 2009, listing small withdrawals including three on April 13, 2009, one on April 24, 2009, and five additional withdrawals from April 27 to May 6, 2009; several [REDACTED] letters addressed to the petitioner; and photographs of the couple with friends on two different occasions and of the couple on their wedding day.

In response to the director's RFE, the petitioner submitted a second personal statement dated June 17, 2010. The petitioner declared that: his decision to marry C-E- came from his heart, he was ready to start a family with C-E-, and believed that C-E- had the same intentions; he does not have a lot of documentation to support his good faith marriage as the couple only resided together for four months and they did not rush to put their names on paperwork or start commingling their resources; and they did not have a chance to start using checks from their joint account but just made some purchases using their debit cards.

The petitioner provided additional statements from friends. In a June 10, 2010 letter signed by [REDACTED] stated that: in early spring of 2009, she and her husband visited the petitioner and C-E- and stayed at their apartment a few days while visiting Cambridge and Boston; the couple looked like a happy couple; and they discussed their trip to New York the following summer and C-E-'s plans to go to Georgia with the petitioner once he could travel. In a June 15, 2010 letter signed by [REDACTED] stated that: she visited the petitioner and C-E- at their apartment on March 8, 2009; they shared dinner and had a bunch of laughs and the petitioner looked very happy; and that she saw the couple again shortly after that at the movies. In the June 10, 2010 letter of [REDACTED] he adds to his previously provided statement that he had personal knowledge that the petitioner and C-E- resided together for four months and that they entered into a good faith marriage to start a family. The record also included three pages of a four-page Comcast bill, with the billing date September 15, 2009, addressed to the petitioner and showing his address as C-E-'s address

Based upon the information in the record, the director denied the petition determining that the record was insufficient to establish that the petitioner had entered into the marriage in good faith.

On appeal, counsel for the petitioner asserts that the 12 pieces of credible evidence submitted by the petitioner meets and exceeds the “any credible evidence” standard set forth by Congress and United States Citizenship and Immigration Services (USCIS) for the review of the instant type of petition. Counsel contends that USCIS in this matter incorrectly applied a heightened standard of review when concluding that the petitioner had not established that he entered into the marriage in good faith.

As counsel observed, 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 for demonstrating the requisite good faith intent lists examples of the types of documents that may be submitted 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 at 8 C.F.R. § 204.2(c)(2) 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. In this matter, the director considered all evidence submitted by the petitioner and found that the petitioner had not established he had entered into the marriage in good faith. We concur in the director’s conclusion.

The petitioner has not provided personal probative testimony that establishes his intent to enter into the marriage in good faith. Upon review of the petitioner’s two statements, the petitioner states generally that he met C-E-, they dated, moved in together, married, and a short time later separated. The petitioner does not provide probative information regarding the couple’s interactions prior to or during their marriage, except as it related to the claimed abuse. The petitioner does not provide the requisite type of detail that would allow an adequate assessment of his 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 record is simply insufficient for such an evaluation. The petitioner provides no substantive information in his testimony that allows a conclusion that his intent in entering into the marriage was in good faith. Upon review of the totality of the record, the petitioner’s general testimony does not establish that he entered into the marriage in good faith.

Similarly, the declarants who submit testimony on the petitioner’s behalf refer only to general instances of meeting C-E-, of attending the wedding, of visiting the couple on one or two occasions after the petitioner’s marriage, and their observation that the couple looked happy together. [REDACTED] who claims she and her husband stayed with the petitioner and C-E-

in early spring of 2009, does not report on the rudeness and anger of C-E- directed at the petitioner as he described in his initial personal statement. Similarly, [REDACTED] report that she visited the petitioner and C-E- at their apartment on March 8, 2009 where the petitioner looked very happy and that she saw the couple again shortly after that at the movies does not comport with the petitioner's description of C-E-'s behavior beginning in March 2009. The declarants do not describe particular incidents in probative detail regarding their observations of the petitioner's intent when entering into the marriage.

Upon review of the documentation submitted, as the director observed, a joint checking account established in March 2009 with very few small transactions while the couple allegedly resided together is insufficient to establish the petitioner's intent in entering into the marriage. The bank statement and limited withdrawals do not establish that the couple used the joint account for the necessities of a life together. The petitioner's receipt of mail at his spouse's address does not establish his intent when entering into the marriage. For example, the petitioner continued to receive mail at his former spouse's address for some months after he separated and began divorce proceedings,² as indicated by the [REDACTED] bill dated September 15, 2009, addressed to the petitioner at his former spouse's address. Photographs of the couple at their wedding ceremony and on one or two other occasions are also insufficient to establish the petitioner's good faith intent when entering into the marriage. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on his behalf fail to support a finding that he entered into the marriage in good faith. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with C-E- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied and the appeal dismissed for the above stated reason. 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.

² The petitioner claims that he moved out of his former spouse's address in the middle of April 2009 and that he began divorce proceedings in early May 2009. The record does not include the petitioner's final divorce decree.