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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

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

FEB 15 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.

The director determined that the petitioner had not established that he had jointly resided with a United States citizen, that he had been subjected to battery or extreme cruelty perpetrated by a United States citizen, and that he had 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 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 the Dominican Republic. He entered the United States on or about December 17, 2008 on a K-1 visa. On January 12, 2009, the petitioner married N-G-¹, the claimed abusive United States citizen. On March 19, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On April 14, 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-G-, that he had been subjected to battery or extreme cruelty perpetrated by N-G-, and that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides a statement on the Form I-290B in support of the appeal.

Residence

The petitioner in this matter indicates on the Form I-360 that he jointly resided with N-G- from December 17, 2008 to April 1, 2010. In the petitioner's statement in support of the appeal, he does not provide information regarding the couple's joint residence but focuses on the claimed abuse. He noted that he did the housework and helped with N-G-'s children and took them to school but he does not identify this location.

In response to the director's RFE, the petitioner provided statements signed by [REDACTED] [REDACTED] both indicate that they have known the petitioner for about 30 years and knew that the couple got married and lived together in Virginia Beach, Virginia. Neither affiant indicates that he or she visited the couple at their home or provides other information in support of the claim that the couple lived together in Virginia Beach, Virginia. [REDACTED] does not reference the couple's claimed joint residence in his statement. The petitioner also provided a Bank of America statement addressed to the petitioner and N-G- at a location in Virginia Beach, Virginia, but the statement is for services for a two-week period in June 2009, a date subsequent to the time the petitioner indicated he was asked to leave the household.

Based on the information provided, the director determined that the evidence submitted did not establish that the petitioner had resided with N-G-. On appeal, counsel for the petitioner asserts that the director failed to consider the petitioner's statement, failed to consider the affidavits submitted on his behalf, and failed to consider that N-G- refused to list the petitioner on any joint accounts or bills with the exception of the checking account.

¹ Name withheld to protect the individual's identity.

Contrary to counsel's assertion, the director considered the petitioner's statement and the affidavits submitted on his behalf and the petitioner does not claim in his statement that his spouse refused to list him on any joint accounts or bills. As the director observed, the petitioner did not offer probative testimony regarding the couple's claimed joint residence. The petitioner fails to describe the home in any way. He fails to 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. The affiants do not indicate that they visited the couple at their residence or that they witnessed couple's routines in their home if they did visit. Also as the director observed, the bank statement addressed to the petitioner and N-G- is for services rendered subsequent to the time the petitioner moved out of the home. While the lack of documentary evidence in this matter is not controlling, the petitioner's failure to provide probative testimony regarding the claimed joint residence precludes a determination that he jointly resided with N-G-. 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 failed to establish that he jointly resided with N-G- during the marriage. The record lacks evidence establishing the petitioner and N-G-'s alleged joint residence.

Abuse

The petitioner in his statement indicated his spouse complained that she had to pay all the bills and that she had found someone else who could better assist her in paying the bills. The petitioner also noted that his spouse called him derogatory names, pulled his hair, and hit him in the arms. The petitioner related an incident when his spouse hit him with a hot spoon because she did not like a meal that he had prepared. The petitioner claimed that he did not report his spouse's behavior to the police because she threatened that she would throw him out of the house if he did. The petitioner also reported that he moved to New York when his spouse told him he had to leave and when he returned to Virginia to pick up his mail, his spouse's new boyfriend intimidated him and told him that N-G- did not want to see him again and was not going to help him with his adjustment of status paperwork.

The petitioner also submitted an evaluation prepared by [REDACTED], licensed clinical social worker, which was based on a session she conducted with the petitioner on February 24, 2010. [REDACTED] provided a list of the petitioner's report of the changes in his wife's attitude, such as requiring the petitioner to do household chores, calling him derogatory names, fighting with him in public, pulling his hair and grabbing him by the arms when she was angry, refusing to have sexual relations with him, and telling him not to question her when he found her with another man. [REDACTED] provided her clinical impression of the petitioner as an individual with dythymic disorder and referred the petitioner to [REDACTED] to be evaluated by a psychiatrist for medication to help him control his moods.

In response to the director's RFE, the petitioner provided statements signed by [REDACTED] [REDACTED] stated that the petitioner reported that his wife was impulsive, conflictive, and abusive verbally and physically. [REDACTED], who lives in New York, does not indicate that she witnessed any specific incident of battery or extreme cruelty. Similarly, [REDACTED] stated that he kept in touch with the petitioner by talking two or three times

a month and that the petitioner reported that his wife was disrespectful, and was verbally and physically abusive because the petitioner did not want to work without a social security card. ██████████ who also lives in New York, did not indicate that he witnessed any specific incident of battery or extreme cruelty. Likewise, ██████████ who lives in New York, noted that the petitioner informed him that he had marital problems with N-G- but does not provide any information regarding any specific incident of battery or extreme cruelty.

Based on the information in the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty as defined in the statute and regulation.

On appeal, counsel for the petitioner asserts that the petitioner provided specific examples of the type of abuse that he was subjected to and that United States Citizenship and Immigration Services (USCIS) erred by not giving any weight to the petitioner's affidavit. Counsel contends that USCIS did not consider that the petitioner was mostly mistreated in the confines of his home and thus no person witnessed the acts he described. Counsel claims that the director did not explain why the petitioner's statement was insufficient to establish extreme cruelty.

Upon review of the petitioner's statement, the petitioner does not provide probative information regarding specific incidents or events of his spouse's behavior that constitutes battery or extreme cruelty. For example, although the petitioner references an incident with a hot spoon and indicates generally that his spouse hit him and pulled his hair, he does not provide the probative detail regarding these claims to allow a determination that he was subjected to battery perpetrated by his spouse. As supporting evidence that he was hit with a hot spoon, the petitioner submitted a photocopy of two photographs that depict the petitioner with a mark on his arm. These photographs do not establish that he was subjected to battery by his spouse, as they do not indicate when the photos were taken and are not resolved enough to conclude that they are marks consistent with a burn from a hot spoon.

Similarly, the petitioner refers to his spouse calling him names, complaining that he does not assist in paying the bills, turning to another man, and making him do the housework; however, the petitioner does not provide the requisite detail regarding his spouse's behavior that establishes that this behavior constitutes extreme cruelty as set out in the statute and regulation. 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 such abuse. In this matter the petitioner fails to provide the timing and circumstances of any specific incident in detail. The petitioner fails to establish that he was subjected to battery or extreme cruelty as those terms are defined in the statute and regulation.

The affidavits submitted on the petitioner's behalf also fail to provide the probative detail of specific incidents of battery or extreme cruelty. The affiants do not indicate that they witnessed any abusive behavior exhibited by the petitioner's spouse.

A review of the psychological evaluation prepared by ██████████ reveals that the evaluation was based on a single interview of unspecified length conducted on February 24, 2010. A single

interview fails to reflect the insight commensurate with an established relationship with a mental health professional. In addition, [REDACTED] does not provide a causal connection between her clinical impression of the petitioner's dythymic disorder and specific acts of abuse that constitute battery or extreme cruelty as defined in the statute and regulation. Moreover, although [REDACTED] referred the petitioner to [REDACTED] to be evaluated by a psychiatrist for medication to help him control his moods, the petitioner has provided no evidence that he has done so. The evaluation does not assist in establishing that the petitioner was subjected to battery or extreme cruelty as described in the statute and regulation.

Upon review of the petitioner's testimony, the testimony of the individuals who submitted statements on his behalf, the photographs of the petitioner, and the psychological evaluation submitted, 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-G-'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-G- subjected him to battery or that her actions constitute extreme cruelty as defined in the statute and regulation. The petitioner has failed to establish that N-G-'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-G-'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)). In this matter, the record presented lacks sufficient information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse.

Good Faith Entry Into Marriage

In the petitioner's statement, the petitioner indicated that he met N-G- while she was vacationing in the Dominican Republic in July 2005 and that after she returned to New York, they communicated by phone and via Internet. The petitioner indicated that they visited many places, went to the beach, hotels and the family's houses and that in 2008, N-G- started the process of petitioning for him as her fiancé. The petitioner stated further that once the process started he traveled to Virginia and the couple married, and he submitted an adjustment of status application. The petitioner does not provide further information regarding his courtship or interactions with N-G- subsequent to the marriage, except as it relates to the claimed abuse.

In the affidavits signed by [REDACTED], each affiant declares that they had known the petitioner and N-G- for a number of years and that the petitioner had indicated that he loved N-G-, that he wanted to start a life together with her, and that the marriage was made with good intentions and in good faith.

The record also included photographs of the couple on what appears to be several occasions and a bank statement issued subsequent to the separation of the couple.

Based on the information in the record, the director determined that the petitioner had not provided evidence that he had entered into the marriage in good faith.

On appeal, counsel for the petitioner asserts that the petitioner married N-G- in good faith and that USCIS should take judicial notice of the decision by U.S. Embassy officials in Santo Domingo who interviewed the petitioner and N-G- regarding the bona fides of their marriage prior to issuing the petitioner a K-1 visa.

Upon review of the petitioner's statement, the petitioner fails to provide substantive information regarding his courtship with and eventual marriage to N-G-. The petitioner does not describe the couple's mutual interests, he does not describe their dating in detail, and he does not provide any information for the record that assists in determining his intent when entering into the marriage. Similarly, the affidavits of the three individuals who testified on the petitioner's behalf fail to provide substantive information regarding the interactions of the couple. The affiants do not offer probative information regarding any particular incidents or events where they witnessed the alleged bona fides of the couple's marital relationship.

The photographs submitted show that the petitioner and N-G- were together on one or more occasions but do not provide evidence of the petitioner's intent when entering into the marriage. Likewise, a bank statement dated subsequent to the separation of the couple does 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 probative detail in a statement to USCIS. In addition, the affiants' statements, submitted on behalf of the petitioner, do not disclose the circumstances or specific events witnessed that would 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.

Contrary to counsel's assertion, approval of a Form I-129F, Petition for Alien Fiance(e), under section 214(d) of the Act is not prima facie evidence of this petitioner's good-faith entry into the subsequent marriage under section 204(a)(1)(A)(iii) of the Act. The statutory and regulatory framework for fiancé(e) petitions significantly differs from the requirement that self-petitioners under section 204(a)(1)(A)(iii) of the Act demonstrate that they "entered into" the marriage with the abusive U.S. citizen in good faith." The U.S. citizen petitioner of a Form I-129F petition bears the burden of proof in fiancé(e) cases to establish prospectively that the petitioner and beneficiary intend to and are able and willing to enter a valid marriage. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). The corresponding regulation does not, however, define what constitutes a "bona fide intention to marry" under section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). In contrast, for self-petitions under section 204(a)(1)(A)(iii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith and the regulation specifically defines the term "good faith marriage" and what types of evidence

will suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). Hence, the fact that a self-petitioner was the beneficiary of an approved Form I-129F filed by his or her spouse will not establish that the alien actually entered into the marriage in good faith. Moreover, while evidence submitted with a Form I-129F petition filed on the alien's behalf may be relevant to a determination of the alien's good faith entry into the subsequent marriage, reliance on such evidence alone is unwarranted. In such instances, the U.S. citizen petitioner would have borne the burden of proof in the fiancé(e) case and reliance on the abusive spouse's representations of the alien's intentions at the time of their engagement is of little probative value.

Upon review of the petitioner's statement 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 record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with N-G- 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.