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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: JAN 06 2011

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)

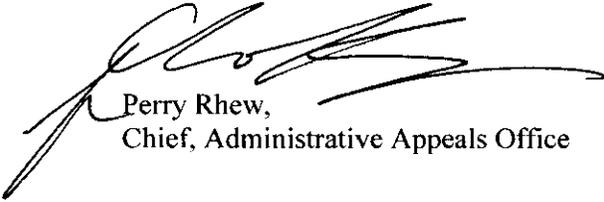
ON BEHALF OF PETITIONER:



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.

Thank you,


Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 on the basis of his determination that the petitioner had failed to establish: (1) that he and his wife shared a joint residence; (2) that his wife subjected him to battery or extreme cruelty during their marriage; and (3) that he married his wife in good faith. On appeal, counsel submits a memorandum of law and copies of previously-submitted documents.

Applicable Law

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, 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, the following:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

Evidence for a spousal self-petition –

- (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

- (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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Lithuania, married S-R-¹ a citizen of the United States, on September 2, 2004. He filed the instant Form I-360 on January 29, 2010. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, filed timely responses. After considering the evidence of record, including the petitioner's responses to the director's requests for additional evidence, the director denied the petition on July 6, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has overcome the director's grounds for denying this petition.

Joint Residence

The first issue before the AAO on appeal is whether the petitioner shared a joint residence with S-R-. On the Form I-360, the petitioner stated that he and S-R- lived together from July 2004 until October 2009, and in his January 10, 2010 self-affidavit he described in detail their apartment and explained how he helped S-R- with household chores, including cooking, cleaning, and laundry.

In their June 7, 2010 joint statement, [REDACTED] and [REDACTED] described how the petitioner and S-R- decorated their apartment together after they married. They stated that that they

¹ Name withheld to protect individual's identity.

discussed carpet and curtain colors with the couple, and went shopping with them at several discount stores on Long Island. They discussed in detail the furnishings that the couple bought, and stated that the apartment was comfortable and cozy.

described his visits to the couple's apartment in his June 8, 2010 statement. He also stated that and helped the petitioner and S-R- decorate their apartment, and described a social gathering at the couple's apartment during which S-R- thanked for helping them decorate the apartment, and told the guests about the nice, yet reasonably priced items they had found together.

The service center director determined that the statements of the petitioner and his friends were insufficient to establish his residence with his wife because he submitted no "objective third party evidence at all to corroborate this claim." However, the regulations do not require a self-petitioner to submit primary, corroborative evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). Moreover, the record in this case indicates that the former couple lived in what was originally S-R-'s apartment and that she forced him out of their home. In his second affidavit, the petitioner also credibly explained why he lacks documentary evidence of their shared residence. The record contains probative, credible testimony sufficient to establish the petitioner's residence with S-R- pursuant to section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The second issue before the AAO on appeal is whether the petitioner has established that S-R- subjected him to battery or extreme cruelty during their marriage.

In his January 10, 2010 self-affidavit, the petitioner stated that S-R- made racist comments about his Russian background, told him that she hated Russians, and forbade him from seeing anyone of Russian descent. The petitioner also stated that S-R- called him names; ridiculed presents he bought for her; threw food at him; criticized his sexual performance; threw him out of their apartment; stole his money and belongings; and that S-R- told him she did not want to sponsor his immigration processing because she wanted him to be dependent upon her. The petitioner further described in detail one incident where S-R- slapped his face and threatened him and another incident where S-R- yelled, threw a plate in his face, jumped on him, hit him in his groin and then ridiculed his pain.

In his June 10, 2010 self-affidavit, the petitioner stated that he was devastated by S-R-'s cruel treatment; that she inflicted a great deal of emotional distress; that her actions were calculated to destroy his peace of mind; and that she slowly destroyed his life. Specifically, the petitioner stated that S-R- directed racial slurs toward him and that she was abusive and controlling.

The petitioner also submitted two affidavits from friends regarding the alleged abuse. In their June 7, 2010 joint affidavit, and described one occasion while eating at a restaurant with the petitioner and S-R-, she insulted Russian accents and Russian traditions. On another occasion, was speaking to the petitioner on the telephone, and he heard S-R- in

the background screaming at the petitioner and calling him names. They stated that later, the petitioner told them that S-R- was controlling and abusive, and that she used physical force against him. In his June 8, 2010 affidavit, [REDACTED] stated that the petitioner told him that S-R- was rude and violent and that she attacked him; kicked him in his groin; called him names; and humiliated him.

As further evidence that he was abused, the petitioner submitted a police domestic incident report and documentation of his stay in a homeless shelter after S-R- kicked him out of their apartment. These documents support the petitioner's account of the incident where S-R- forced him out of their home and he went to a shelter upon the advice of a police officer.

When viewed in the aggregate, the preponderance of the relevant testimonial and documentary evidence of record establishes that S-R- subjected the petitioner to both battery and extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The third issue before the AAO on appeal is whether the petitioner has established that he married S-R- in good faith. The petitioner described in detail how he and S-R- met in his January 10, 2010 self-affidavit. The petitioner stated that he met S-R- in November 2003 when he was working as a staff steward for a cruise line, and he and his co-workers were on a sightseeing tour in New York City. The petitioner recounted in detail where they first met and their first conversation and subsequent date. The petitioner explained that he had to return to Europe shortly thereafter, but that he and S-R- spoke every day by telephone. He came to Miami in connection with his employment on the cruise line in January 2004, and he visited New York as soon as he was able. They resumed their relationship, and he decided to remain in the United States. The petitioner also described in detail how he proposed marriage to S-R- in July 2004, their wedding celebration, and their shared activities during their marriage.

The director found the statements of the petitioner and his friends were insufficient and determined that the petitioner had not established his good-faith entry into the marriage because he did not submit "any objective evidence that can be verified by independent means." Again, the petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The regulations contain no specific formula for determining whether a petitioner has entered into his or her marriage in good faith. Rather, pursuant to the statute and regulation, the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS. *See* Section 204(a)(1)(J) of the Act, 8 U.S.C. §1154(a)(1)(J); 8 C.F.R. § 204.2(2)(i). In this instance, although the petitioner has submitted little probative documentary evidence to support his claim of a good faith marriage, the petitioner's testimony sufficiently establishes that he entered into the marriage in good faith. Moreover, he has explained why he lacks such documentary evidence, and the record lacks any evidentiary basis to question his credibility. The petitioner, therefore, has established that he entered into marriage with S-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

As set forth above, the petitioner has established that he resided with S-R-; that S-R- abused him during their marriage; and that he married S-R- in good faith. Accordingly, the petitioner has established that he is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), and the petition will be approved.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the appeal is sustained.

ORDER: The director's July 6, 2010 decision is withdrawn. The appeal is sustained, and the petition is approved.