

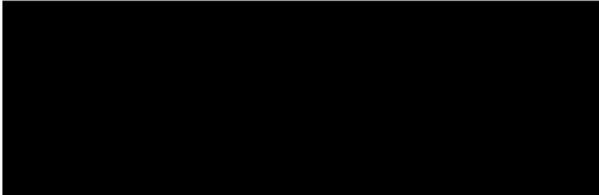
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:

Office: VERMONT SERVICE CENTER

Date:

JAN 10 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.

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 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 dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 brief reasserting the petitioner's eligibility.

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 Turkey, married A-S-¹ a citizen of the United States, on February 22, 2003. He filed the instant Form I-360 on June 3, 2009. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, 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 failed to 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 A-S-. On the Form I-360, the petitioner stated that he and A-S- lived together from February 2003 until February 28, 2008. However, that statement conflicts with the petitioner's statement in his March 17, 2010 self-affidavit that he and A-S- were already living together, with his aunt and uncle, at [REDACTED] at the time he proposed marriage on March 16, 2002, and that they lived there until August 2003. However, when he signed the Form G-325A, Biographic Information, on June 18, 2003, the petitioner stated that he had been

¹ Name withheld to protect individual's identity.

living at [REDACTED] since November 2001, and the record contains a copy of a check written by the petitioner to U.S. Citizenship and Immigration Services (USCIS) on May 12, 2004 which provided the couple's address as [REDACTED]. Thus, the petitioner's self-affidavit, his Form G-325A, and this canceled check conflict with one another.

The petitioner also stated in his March 17, 2010 self-affidavit that he and A-S- moved with his aunt and uncle from the [REDACTED] address in [REDACTED] to [REDACTED] and submitted a lease for the [REDACTED] (which was not signed by the petitioner or by A-S-) covering the period from August 1, 2003 through February 29, 2004. However, the record also contains a statement from a property management company regarding the couple's residence at [REDACTED] stating that on August 30, 2004, the couple gave notice that they were moving away from that residence on October 1, 2004, and that they made their final rent payment on September 1, 2004, which indicates they were still living at the [REDACTED]. This statement from the property management company, therefore, is not consistent with the petitioner's testimony.

The petitioner also stated in his March 17, 2010 self-affidavit that he and A-S- signed a lease in late February 2005 to rent a condominium located at [REDACTED] and submitted a copy of the lease, the term of which began on March 1, 2005. He also submitted a copy of a receipt for a \$1,500 rental deposit the couple made for this property on February 27, 2005. However, the petitioner also submitted a banking statement covering the period from December 3, 2004 through December 16, 2004, which indicated that the petitioner and A-S- were already living at the [REDACTED] address during that time period. The medical billing information also indicates that the petitioner was already living at the [REDACTED] address in November 2004.

The petitioner also submitted two banking statements regarding the couple's joint account covering the period from May 14, 2005 through July 14, 2005 which indicated that the couple was living at [REDACTED]. However, the petitioner's testimony and the other evidence of record also indicate that the couple was living at the [REDACTED] address during that time.

The inconsistencies catalogued above diminish the probative value of the petitioner's testimony that he and A-S- shared a joint residence. Nor are the leases evidence of a shared residence because, in addition to conflicting with the petitioner's testimony, one of them was not signed by the petitioner or by A-S-.

Nor does the other documentary evidence submitted by the petitioner establish that he and A-S- shared a residence. Many of the submitted utility statements were issued after the date on which the alleged joint residence ended. The joint tax return for the filing year of 2005 contains no indication that this return was actually filed with the Internal Revenue Service.

Nor does the testimony of the petitioner's friends and family members establish that he and A-S- shared a joint residence. Although [REDACTED] and the petitioner's mother all state in general terms that the petitioner and A-S- resided together, they do not provide detailed, probative information regarding, for example, the couple's shared residence, their shared belongings, or their shared, residential routines.

On appeal, counsel argues that the petitioner has overwhelmingly established that he and A-S- lived together at three separate residences, but counsel relies primarily on the petitioner's testimony in support of her assertion. As noted above, that testimony with regard to the petitioner's alleged joint residence with A-S- not only conflicts with much of the documentary evidence he submitted in support of the petition, but also conflicts with his statements on the Form I-360 itself. These inconsistencies diminish the probative value of the petitioner's testimony.

When considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with A-S-, as required by 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 A-S- subjected him to battery or extreme cruelty during their marriage. When he filed the Form I-360, the petitioner submitted a self-affidavit; a psychiatric evaluation; medical records and bills; and statements from friends and family members in support of his assertion that he was abused by A-S-.

In his April 19, 2009 self-affidavit, the petitioner stated that he and A-S- initially lived with his aunt and uncle. However, A-S- told the petitioner that she did not want to live with his uncle, and "made it into a big issue." As such, the petitioner's mother bought a condominium for the couple to live in. The petitioner stated that after they moved into the condominium, A-S- changed. According to the petitioner, after moving into this condominium A-S- began spending money recklessly, and yelled at him and made threats, when he told her she needed to return items she had purchased. He also stated that A-S- began threatening his immigration status; called him names; locked him out of the house; and stayed out late with friends. The petitioner stated that after A-S- told him that she was not coming home because she hated him and could "do better" than him, he had to be hospitalized. After a few days of treatment, he was transferred to a psychological hospital and treated for two weeks prior to being released. Although A-S- did not contact the petitioner while he was being treated, she called him after his release and apologized for her behavior. They met for dinner, and decided to reconcile. The petitioner stated that things went well after that point, that the marriage was "back on track," and that "[I]f life was back to where I wanted it." The petitioner stated that in 2007 they learned they were having a baby in 2007, which brought a great deal of joy to them. He and A-S- appeared for an interview in connection with the petitioner's immigration processing on February 28, 2008, and when he came home from work the next day, he found that A-S- had packed her belongings and left. He stated that when he called A-S-, she told him that he was not the father of the baby and that she did not want to be with him any longer.

In his December 11, 2008 evaluation, [REDACTED] stated that he met with the petitioner on two occasions: on December 1, 2004, and four years later on December 4, 2008. According to [REDACTED], the petitioner had a mental breakdown in 2004 during a period of unspecified abuse and harassment by A-S-, was hospitalized "on two or three occasions," and he was diagnosed with schizophrenia. [REDACTED] stated that petitioner told him that although A-S- never hit him, she was mentally abusive; demanded and spent significant amounts of money; and became pregnant by another man.

The petitioner also submitted several documents regarding his medical condition and, specifically, his 2004 hospitalization. These documents indicate that the petitioner was admitted to Florida Hospital on November 13, 2004 and transferred to psychiatric care five days later. None of the 2004 documents reference any maltreatment by A-S-.

In her April 18, 2009 statement the petitioner's mother stated that when she learned that A-S- told the petitioner she no longer wished to live with his uncle, she flew to the United States and bought them a condominium. She stated that after the couple moved into the condominium, and she spent time with them, she became concerned with A-S-'s spending habits. She stated that the petitioner also expressed concern over those spending habits. The petitioner's mother stated that the petitioner's uncle called her a couple of months later to notify her that the petitioner had been admitted to a psychiatric hospital. When she arrived in the United States, she learned that A-S- had been lying to the petitioner about what she was doing and how she was spending money, and left him "in a very bad situation." He was diagnosed with paranoid schizophrenia, and was unable to "handle himself." The petitioner's mother stated that after the petitioner was released from treatment he and A-S- reconciled and had no problems for the next three years, and that A-S-'s announcement that she was pregnant was "wonderful news for us all." She stated that A-S- packed her belongings and moved out of the condominium following the petitioner's February 2008 immigration interview, and later told the petitioner that he was not the father of the baby.

The petitioner also submitted an undated statement from [REDACTED] the uncle with whom the couple initially lived. [REDACTED] stated that although the marriage started well, things began changing as A-S- became increasingly greedy. According to [REDACTED] because A-S- began expecting nice things, it became increasingly hard for the couple to make ends meet. He also stated that he became concerned after he witnessed A-S- threatening the petitioner's immigration status. According to [REDACTED] A-S-'s increasing demands led to the petitioner's need for mental health treatment. He stated that although A-S- left the petitioner while he was being treated, the couple reconciled after his release, and things went well until A-S- left the petitioner following his immigration interview and told him he was not the father of her baby.

The petitioner also submitted an April 20, 2009 statement from [REDACTED] one of his co-workers. [REDACTED] stated that the petitioner told him that A-S- threatened to divorce him if he did not give her money. He also stated that on one occasion, the petitioner spent the night at his house because A-S- had locked him out of their home. According to Mr. Buga, A-S-'s behavior eventually became too much to bear, and the petitioner had a nervous breakdown that led to his hospitalization. He stated that

although A-S- and the petitioner reconciled, and things were “pretty good” for several years, A-S- left the petitioner following his immigration interview and told him that she was pregnant with another man’s baby. [REDACTED] wife, stated in her April 20, 2009 declaration that A-S- was possessive and controlling.

The petitioner’s initial submission contained several inconsistencies. First, we note that in his April 19, 2009 self-affidavit, the petitioner stated that it was *after* they moved to the condominium his mother had bought them that A-S- changed and spent money recklessly, yelled at him, and made threats, and that after enduring such mistreatment, he was hospitalized. As previously noted, however, A-S- and the petitioner signed the lease for the condominium on February 28, 2005 and paid the rental deposit on that same date, and the lease term began on March 1, 2005. If the change in A-S-’s behavior which culminated in the petitioner’s hospitalization did not take place until after they moved into that condominium, then such hospitalization would have occurred, at the earliest, in the spring of 2005. However, the documentation submitted by the petitioner regarding that hospitalization indicates that he was first admitted on November 14, 2004, over three months before they moved into the condominium. This discrepancy diminishes the probative value of the petitioner’s testimony.

Moreover, much of the testimony of the petitioner’s affiants submitted at the time the petition was filed contains the same discrepancy. For example, the petitioner’s mother stated that the petitioner was hospitalized “a couple” of months after he and A-S- moved into the condominium. However, he was hospitalized in November 2004, and the record indicates that he and A-S- moved into the condominium in March 2005. [REDACTED] stated that the petitioner had a mental breakdown in 2004 during a period of abuse and harassment by A-S-. However, the petitioner stated that the abuse began after they moved into the condominium. In addition, none of the contemporaneously-issued documentation regarding the petitioner’s 2004 hospitalization mentioned abuse or marital problems.

The testimony contained in the petitioner’s March 17, 2010 self-affidavit differed from that of his April 19, 2009 self-affidavit. In his first self-affidavit, the petitioner did not describe any instances of abuse that occurred prior to the couple moving into the condominium his mother bought for them. The petitioner had stated that A-S- had wanted to move, and that after they moved into the condominium she changed. However, in his second self-affidavit the petitioner described several instances of abuse. In his first self-affidavit, the petitioner stated that after the couple reconciled following his hospitalization, their relationship was “back on track.” However, in his second self-affidavit he stated that A-S-’s previous behavior resumed. We also note that although [REDACTED] stated that the petitioner told him that A-S- had never hit him, the petitioner stated in his March 17, 2010 self-affidavit that A-S- charged him and hit his chest, and also stated that she hit him with a vacuum cleaner hose. The petitioner’s April 19, 2009 testimony regarding the abuse to which he was allegedly subjected also directly conflicts with his sworn statement at his February 27, 2008 adjustment of status interview that A-S- had never abused him.

The petitioner also submitted an updated statement from [REDACTED] and statements from [REDACTED] in response to the director’s request for additional

evidence. In his March 18, 2010 declaration, [REDACTED] stated that the physical, mental, and verbal abuse to which the petitioner was subjected led to his mental breakdown in 2004.

[REDACTED] stated in his March 12, 2010 declaration that he could see that the petitioner was under a great deal of stress as a result of financial difficulties. He also stated that A-S- told him that she did not want the petitioner to play soccer any longer. According to [REDACTED] it was clear to him that A-S- was controlling the petitioner.

In his March 10, 2010 declaration [REDACTED] described the petitioner's 2004 breakdown and stated that after he was released from treatment, he was not the same.

Upon review, we agree with the director's finding that the petitioner failed to establish that he was subjected to battery or extreme cruelty. With regard to battery, we note [REDACTED] explicit statement that the petitioner told him that A-S- never hit him, as well as the petitioner's failure in his first self-affidavit to mention any incidents of physical abuse. On appeal, counsel asserts that the petitioner's allegations in his second affidavit regarding physical abuse merely provide additional details, and do not contradict "anything stated in his initial declaration or anywhere else." We disagree. The statement that hitting occurred contradicts the statement that no hitting occurred. Such a direct contradiction diminishes the probative value of his testimony as well as that of [REDACTED] who also referenced physical abuse in his second statement after failing to do so in his first. The preponderance of the evidence does not establish that the petitioner was subjected to battery perpetrated by A-S-.

Nor does the record demonstrate that A-S-'s non-physical behavior constituted extreme cruelty. First, the inconsistencies catalogued above diminish the credibility of the testimony of the petitioner and [REDACTED]. The testimony of the petitioner's mother also conflicts with that of the petitioner. As noted, the petitioner's mother stated that after A-S- and the petitioner reconciled following his release from mental health treatment, they had no problems for the next three years. Although the petitioner made a similar claim in his first affidavit, in his second affidavit he stated that "[i]t all started again just like before." Given this contradiction between the petitioner's testimony and that of his mother, her testimony is of little probative value. Although the petitioner's remaining affiants discuss abuse, their testimony is of little probative value as it lacks detailed, probative descriptions of specific instances of such abuse. The petitioner has failed to establish that A-S-'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 A-S-'s behavior was accompanied by other coercive actions or that her behavior was aimed at insuring dominance or control over him. 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)).

The petitioner has failed to establish that A-S- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(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 A-S- in good faith. In his April 19, 2009 self-affidavit, the petitioner stated that he met A-S- when he visited the restaurant at which his uncle was working. According to the petitioner, A-S- was working there as a waitress. He stated that they became friends and spent a great deal of time together, and that their friendship developed into a romantic relationship. The petitioner stated that while they were dating they saw movies and went to family barbeques. They became engaged after having dated for one year.

In his March 17, 2010 self-affidavit, the petitioner described his physical attraction to A-S- when they first met, and stated again that he and A-S- became good friends, and that their friendship led to romantic relationship. The petitioner stated that he proposed marriage on March 16, 2002, one year into their relationship, and that she accepted.

stated only that the petitioner told him that he met A-S- in 2001 and that they married in 2003, and the petitioner's mother stated that she flew to the United States for both the engagement party and the wedding. The petitioner's other affiants provide little meaningful discussion of the couple's relationship.

The testimony of the petitioner and his affiants fails to establish that he married A-S- in good faith. The statements submitted by the petitioner and his affiants lack probative detail providing insight into the petitioner's intentions upon entering into the marriage, and provide very little information regarding the former couple's shared experiences, apart from the alleged abuse.

Nor does the documentary evidence submitted by the petitioner establish that he married A-S- in good faith. Although the petitioner submitted four photographs, they are untitled and undated, and demonstrate only that the petitioner and A-S- were pictured together on a few occasions. Nor do we consider the residential leases evidence of the petitioner's good faith entry into the marriage: as noted in our previous discussion, the dates contained in these leases conflict with the testimony of the petitioner and his mother regarding the dates at which they lived at the locations indentified in the leases. The bank statements indicating a joint account are also insufficient, as there is no indication that both the petitioner and A-S- accessed the account. As such, they are not evidence of shared financial obligations. Nor are the utility bills and magazine address labels evidence of shared financial obligations. Although A-S- and the petitioner filed a joint income tax return in 2005, we note that the petitioner filed as "single" in 2004 and "married filing separately" in 2006.

On appeal, counsel argues that the petitioner's description of incidents of abuse that occurred at their home shows "a domestic situation that verifies the bona fides of the marriage." As set forth above, the petitioner has failed to demonstrate that he was abused by A-S-, and his statements regarding the alleged abuse do not establish his claim of entering the marriage in good faith.

The petitioner has failed to establish that he entered into marriage with A-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's grounds for denial and has not established that he jointly resided with A-S-; that she subjected him to battery or extreme cruelty; or that he married her in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and his petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.