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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

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U.S. Citizenship
and Immigration
Services

B9.

FILE:



Office: VERMONT SERVICE CENTER

Date:

JAN 11 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:

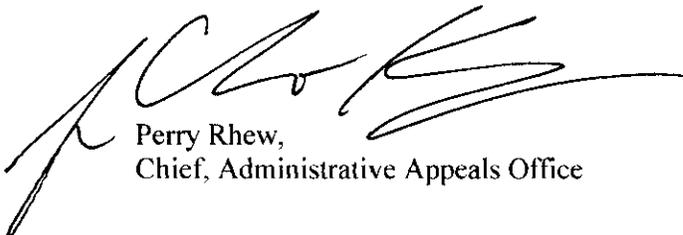


INSTRUCTIONS:

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 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; and (2) that he married his wife in good faith. On appeal, the petitioner submits a letter and additional evidence.

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.

* * *

(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.

* * *

- (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 Lebanon, married W-S-,¹ a citizen of the United States, in Lebanon on January 11, 2008, and he entered the United States on a K-3 visa on May 30, 2009. He filed the instant Form I-360 on October 22, 2009. 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 response to the requests for additional evidence, the director denied the petition on June 28, 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

¹ Name withheld to protect individual's identity.

The first issue before the AAO on appeal is whether the petitioner shared a joint residence with W-S-. As noted previously, although the petitioner and W-S- married in Lebanon on January 11, 2008, he did not enter the United States until May 30, 2009. On the Form I-360 and in his October 14, 2009 self-affidavit, the petitioner claimed that he and W-S- resided together until June 23, 2009. In his June 28, 2010 decision denying the petition, the director asserted that the petitioner should have attained some sort of documentation of a joint residence during the couple's 18-month marriage.² On appeal, the petitioner reasserts his earlier contention that he and W-S- resided together at her apartment after his arrival in the United States.

Upon review, we find that the petitioner has established that he resided with W-S- and, as a preliminary matter, we withdraw the director's statement implying that documentary evidence of a joint residence is required. 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). We also note that the regulation does not prescribe a specific period of time during which a self-petitioner must have resided with his or her allegedly abusive spouse. Although the director referenced the 18-month period of time that elapsed from the date the couple married until they ceased living together, we note that the petitioner did not claim that he and W-S- resided together during this entire period of time. Rather, he stated in his October 14, 2009 self-affidavit that they lived together in what was originally W-S-'s apartment from the time he arrived in the United States on May 30, 2009 until June 23, 2009. The record contains probative, credible testimony sufficient to establish the petitioner's residence with W-S- pursuant to section 204(a)(1)(A)(iii)(II)(dd) of the Act, and we withdraw that portion of the director's decision to the contrary.

Good Faith Entry into Marriage

The second issue before the AAO on appeal is whether the petitioner has established that he married W-S- in good faith. In his October 14, 2009 self-affidavit, the petitioner stated that he met W-S- in June 2007 through an online social networking service. According to the petitioner, W-S- was listed on a friend's "contact list," and the two began sending messages to one another. Those messages led first to online chats, and then to telephone calls. The petitioner stated that he and W-S- shared a great deal in common, and W-S- decided to travel to Lebanon in December 2007 to meet the petitioner. The petitioner stated that after spending one day together, they realized that they loved one another, and decided to marry. They married on January 11, 2008, and W-S- returned to the United States three days later.

The petitioner also submitted statements from [REDACTED] all of whom attested, in very general terms, to the petitioner's good faith entry into the

² Although the director stated that the couple divorced on July 2, 2009, we find no evidence that they divorced on that date. The July 2, 2009 document signed by W-S- is a power of attorney authorizing her brother to act on her behalf in matters concerning the couple's pending divorce proceedings in Lebanon. The record does not indicate the outcome of these proceedings.

marriage. The petitioner also submitted receipts for supplies from their wedding ceremony and photographs of the couple, and the record also contains cellular telephone statements submitted by W-S- in support of the visa petition she filed on behalf of the petitioner.

The relevant testimonial evidence fails to establish that the petitioner married W-S- in good faith. The testimony of the petitioner lacks probative details regarding the relationship providing insight into his intentions upon entering into the marriage, and provides very little information regarding shared experiences, apart from the alleged abuse. For example, while the petitioner states that he and W-S- shared a great deal in common, he fails to provide any examples of such commonalities. Although he states that he and W-S- spent a great deal of time chatting online and talking on the telephone, he fails to provide any examples of the types of things they talked about. Although he states that after spending one day together he and W-S- realized they wanted to spend their lives together, he provides no details as to the types of experiences they shared that day, or the types of things they talked about on that day. In short, the petitioner failed to offer any meaningful insight into the couple's courtship and decision to marry. The statements from the petitioner's affiants suffer from the same deficiencies.

Nor does the documentary evidence of record establish that the petitioner married W-S- in good faith. That the couple purchased supplies for their wedding party does not establish that the petitioner married W-S- in good faith, and while the photographs of the couple on what appears to be their wedding day document the event, they do not speak to the petitioner's intentions. Although W-S-'s cellular telephone bills indicate she made many calls to Lebanon, these bills speak primarily to her intentions rather than to those of the petitioner, as it appears as though she made all the calls.

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

Conclusion

On appeal, the petitioner has established that he jointly resided with W-S-, but has not demonstrated 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.