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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



B9

Date:

Office: VERMONT SERVICE CENTER

FILE: 

JUL 12 2011

IN RE: Petitioner: 

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 the \$630 fee. 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 Vermont Service Center director (“the 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 his United States citizen spouse.

The director denied the petition for failure to establish the requisite abuse and good-faith entry into the marriage. On appeal, counsel submits a brief. Counsel asserts that the petitioner has established the requisite abuse and good-faith entry into the marriage through a preponderance of evidence.

Applicable Law and Regulations

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

(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 or the self-petitioner’s child, 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 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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Nigeria who entered the United States as a nonimmigrant visitor in 2001. On April 27, 2005, the petitioner married a U.S. citizen in Minnesota. The petitioner filed the instant Form I-360 self-petition on September 18, 2009. The director subsequently issued a request for additional evidence (RFE) that the petitioner had the requisite qualifying relationship, joint residence, abuse, and good-faith entry into the marriage. The petitioner, through former counsel, submitted

additional evidence. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite abuse and good-faith entry into the marriage.

On appeal, counsel asserts that the clinical report from [REDACTED], and the statements from the petitioner and his friends establish that the petitioner was subjected to extreme cruelty and battery by his wife. Counsel also asserts that the petitioner's statements, joint checking account with his wife, photographs, letters from friends, and the confirmation from [REDACTED] establish that the petitioner entered into the marriage in good faith. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome the director's grounds for denial.

Battery or Extreme Cruelty

In his August 14, 2009 affidavit submitted at the time of filing, the petitioner stated, in part, that: he and his wife had lived together in [REDACTED] Minnesota since their marriage in 2005; his wife sometimes denied him from sharing their bed; his wife carried on an affair with another woman who slept in his and his wife's bed; his wife refused to have sexual relations with him; his wife locked him out of the house and refused to let him back in; his wife repeatedly asked him for money and threatened to harm him and have him deported; his wife used fear to get what she wanted; his wife withheld mail from him and shouted, screamed, and scolded him in front of the kids; his wife was physically aggressive and pushed him; his wife embarrassed him in public by discussing matters publicly and making herself look like a saint; and his wife told lies, damaged his reputation, and stole from him.

In his May 21, 2010 affidavit submitted in response to the RFE, the petitioner stated, in part, that he considered his [REDACTED] Minnesota address his permanent residence though he traveled back and forth from Connecticut where he worked.

In her April 24, 2010 affidavit submitted in response to the RFE, [REDACTED] stated, in part, that: she witnessed a change in the petitioner's wife towards the petitioner; the petitioner's wife became physically and emotionally abusive to the petitioner and other family members; the petitioner's wife placed unrealistic financial expectations on the petitioner after she was unable to work; the petitioner's wife threatened to have the petitioner deported; the petitioner gave into his wife's demands out of fear; and the petitioner sought help from her and her husband.

In his April 24, 2010 affidavit submitted in response to the RFE, [REDACTED] stated, in part, that: he witnessed the petitioner's wife abuse the petitioner and their children; in the summer of 2007, he and his wife witnessed the petitioner's wife tell the petitioner to mind his own business after he had attempted to protect her child from his wife's swearing and insults.

In her April 24, 2010 affidavit submitted in response to the RFE, [REDACTED] stated, in part, that: she witnessed the petitioner's wife acting aggressive and abusive at a restaurant when she complained that she did not like the birthday gift given to her by the petitioner; and the petitioner's wife complained that the petitioner should return the diamond bracelet because she did not like it. In her May 6, 2010 clinical report submitted in response to the RFE, [REDACTED] stated, in part, that she interviewed the petitioner for two hours on April 22, 2010. [REDACTED] also stated that: the petitioner's marital problems began in 2008, when his wife, without

explanation, stopped working; the petitioner felt that his wife was hiding something when she continually asked for and needed more money; in February 2009, the petitioner was laid off from his part-time job and his wife threatened to deport him when he did not send her a sufficient amount of money; the petitioner's wife slapped the petitioner's face and pushed him out of the bedroom on one occasion because earlier when they were out to dinner, he had asked her to pay the bill; on another occasion, the petitioner's wife called the petitioner a derogatory name, threw a pillow at him, and pushed him out of the bedroom; on another occasion, the petitioner's wife refused him entry into the house; the petitioner's wife often verbally abused the petitioner and became angry when he sometimes forgot to remove his shoes before entering the house; the petitioner's wife exhibited possessive and controlling behavior by selecting all the groceries, interrupting and belittling the petitioner, not allowing him to touch certain items in the house, opening his mail, demanding money from him, and stealing his clothing and other items; the petitioner felt humiliated and depressed because his wife was having an affair with another woman; and the petitioner wanted to be polite and did not want to upset his wife so he asked her only if she was having an affair. [REDACTED] found that the petitioner was experiencing borderline to mild depression and mild anxiety, and concluded that he should be allowed to remain in the United States because he had a good support network and the community resources to get counseling.

The director determined that the petitioner had not established that his wife had subjected him to battery or extreme cruelty. The director found that the statements from the petitioner and on his behalf contained inconsistencies, and the incidents described were not comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Regarding the inconsistencies, the director found that the petitioner indicated in his first affidavit that he had resided with his wife in Minnesota since their marriage, which was inconsistent with his second affidavit, in which he stated that he traveled back and forth between Minnesota and Connecticut due to his job. The director also found that the petitioner reported two incidents of physical abuse to [REDACTED] that he did not report in his initial testimony. On appeal, counsel asserts that the inconsistencies were only minor and that the record contains a plethora of corroborating evidence to establish that the petitioner was subjected to emotional and physical abuse by his wife.

We find no error in the director's assessment of the relevant evidence. Counsel's assertions regarding the inconsistencies between the applicant's report to [REDACTED] and his declarations submitted to U.S. Citizenship and Immigration Services about the instances of abuse are unpersuasive. The petitioner has not provided any explanation regarding why particular events and behaviors of his spouse were absent from his two declarations but were contained in [REDACTED] report. We note that the events he reported to [REDACTED] which included his wife once slapping him in the face, throwing a pillow at him, and pushing him out of the bedroom, do not contain the probative details to reach a conclusion that he was the victim of battery or extreme cruelty perpetrated or incited by his spouse. The petitioner's statements and those submitted on his behalf do not recount any specific incidents of battery in probative and consistent detail. Their statements also do not demonstrate that the petitioner's wife'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 his spouse'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)). The relevant evidence in this case fails to demonstrate that, during their marriage, the petitioner’s spouse subjected him to battery or 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)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In his August 14, 2009 affidavit submitted at the time of filing, the petitioner stated, in part, that he met his wife in the United States and married her because he loved her and believed that she loved him.

In her May 6, 2010 clinical report submitted in response to the RFE, [REDACTED] stated, in part, that: a friend introduced the petitioner to his wife in 2004, when the petitioner was visiting friends in Minnesota; the petitioner found his wife attractive and thought they were compatible; the petitioner returned to Connecticut when he could not find work in Minnesota and he and his wife maintained a long-distance relationship for six months; the petitioner visited his wife every other month and she visited him in Connecticut; the petitioner and his wife talked about getting married; the petitioner was in love and believed that his wife loved him; and after the petitioner and his wife were married, he returned to Connecticut because he could not find work in Minnesota. [REDACTED] concluded, in part: “It appears that [the petitioner] entered the marriage in good faith.”

The director determined that the petitioner had submitted insufficient evidence to establish that he married his wife in good faith. On appeal, counsel asserts that the director ignored that the petitioner and his wife retain a joint checking account, have been married for five years, and have photographs to show that they are indeed a couple. Counsel also states that the petitioner’s statements and the letters from his friends prove that the petitioner’s relationship with his wife was a real relationship. Counsel also states that [REDACTED] confirmed that the petitioner and his wife married in order to start a life together.

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). In this case, we do not find the petitioner’s evidence sufficient to meet his burden of proof. The petitioner provided only a cursory overview of how he met his wife, their courtship, decision to marry, and shared experiences, apart from the alleged abuse. The photographs submitted showing the couple together on a few occasions do not establish the petitioner’s intent at the time of his marriage. In addition, while counsel asserts that the petitioner and his wife retain a joint checking account, counsel’s assertion does not establish that the petitioner and his wife established a life together. It is noted that the record contains no evidence of the claimed account. The supporting documentation, including the petitioner’s statements, the statements on his behalf, and the photographs, when considered in the aggregate, do not include the necessary and fundamental information to establish the petitioner entered into the marriage in good faith. While the lack of documentation is not necessarily disqualifying, in this matter, as previously mentioned the petitioner provides little information regarding his initial meeting with his spouse, their courtship, their discussions of marriage, their plans to marry, and the interactions subsequent to the marriage except as they relate to the claims of abuse. Simply stating that he entered into his marriage in good faith is insufficient. The petitioner fails to provide probative testimony that contributes to an understanding of his intent when entering into the marriage. Upon review, the

record in this matter does not include sufficient probative evidence establishing that the petitioner entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The petitioner has failed to establish the requisite abuse and good-faith entry into the marriage. Accordingly, the appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed. The petition remains denied.