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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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Date: JUL 21 2011 Office: VERMONT SERVICE CENTER File: 

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:

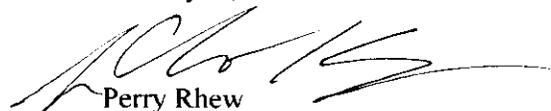


INSTRUCTIONS:

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 Director, Vermont Service Center, (“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 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with his wife, entered into marriage with his wife in good faith and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and copies of documents previously filed.

Relevant 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 further explicated 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 further explicated 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Haiti who entered the United States on April 11, 2007 with a K-1 fiancé visa. The petitioner married his fiancée on June 26, 2007 in Jacksonville, Florida. On February 14, 2008, the applicant filed an application to register permanent residence or adjust status (Form I-485). The applicant's adjustment application was denied on September 25, 2008 as abandoned. The petitioner filed the instant Form I-360 on June 22, 2009. The director subsequently issued a Request for Evidence (RFE) of the petitioner's residence with his wife, good-faith entry into the marriage and his wife's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief and copies of documents previously filed. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Joint Residence

On the Form I-360, the petitioner stated that he lived with his wife from March 2007 until February 2008 and that their last joint address was at [REDACTED] in Jacksonville, Florida. The director determined that the evidence provided by the petitioner did not sufficiently demonstrate that he and his wife resided together. On appeal, counsel asserts, "[t]he file contains evidence by the Jacksonville Police Department and the domestic violence court that [REDACTED] lived with his wife. Those documents clearly establishes [sic] residence by [the petitioner's wife's] own admission" (emphasis omitted). Counsel further asserts that the petitioner "resided at that address with her until she bought him a ticket to Fargo, ND leading him to think he was just spending a few weeks with his mother and sister."

Upon review of the record of proceeding, the AAO finds that the petitioner has established that he resided with his wife. The petitioner stated in his letter, dated March 8, 2010, that on February 24, 2008 his wife purchased a "one-way ticket" to Fargo. The petitioner submitted a bus ticket as evidence of his departure. He noted in his initial undated statement that "[i]t was after she sent me to Fargo, North Dakota that she decided to obtain a temporary injunction." The petitioner submitted a Petition for Injunction for Protection Against Domestic Violence, which his wife filed against him on March 25, 2008. The petition contains a request by his wife for "the exclusive use and possession of the home that the parties share at [REDACTED]." The petitioner also submitted a Jacksonville Sheriff's Office Incident Report filed by his wife on April 29, 2008 for his violation of the protection order. The report reflects that both the petitioner and his wife resided at [REDACTED] in Jacksonville. The incident report and injunction petition are relevant and credible

evidence that the director did not address in his discussion of the petitioner's residence claim. On appeal, the petitioner has established by a preponderance of the evidence that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his initial March 7, 2009 letter, the petitioner stated that two years before his marriage he had a good relationship with his wife and they often talked on the phone. He stated, "She was happy to have me come to the USA and I was also very happy to come to the USA to be with her and be part of her family. Especially becoming a father presence in the lives of her children." In a subsequent statement from the petitioner, dated March 8, 2010, he stated that he met his wife four years ago through his wife's mother. He noted, "[w]e kept it alive through telephone calls, letters and memorable pictures" and "[t]hen one day, [H-R-]¹ travelled to Haiti to meet with me." He stated, "soon after our mutual agreement, she made a request of a fiancé visa for me from US immigration." The petitioner did not further describe their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

In response to the RFE, the petitioner submitted a letter from his sister, [REDACTED], who briefly discussed the petitioner's marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. [REDACTED] stated that the petitioner and his wife met in Haiti in 2001 and fell in love. [REDACTED] noted, "[m]y brother was a father to all of her children who liked him very much." [REDACTED] statement that the petitioner met his wife in Haiti in 2001 is inconsistent with the petitioner's own account of his initial correspondence with his wife. The petitioner claimed in his March 8, 2010 letter that he has known his wife for four years and their "liaison grew out of [their] distance correspondence which was made possible by [H-R-'s] mother." Moreover, [REDACTED] does not describe her observations of the petitioner's interactions with his wife or otherwise indicate that she has any personal knowledge of their relationship. The director correctly concluded that this letter provided no specific information demonstrating that the petitioner married his wife in good faith.

On appeal, counsel asserts that the petitioner, "could not proffer any documents to show a good-faith marriage due to the fact that he was never allowed to secure a social security number" and "[h]e was being used as a slave or house servant by [H-R-] to drive . . . her children to school, wash the cars, clean the house and cook." Counsel contends, "[i]t is naïve to think that the perpetrator of this exploitative feat would add [the petitioner] on her bank accounts, leases, bills etc." Evidence of good-faith entry into marriage is not limited to joint bank accounts, leases and bills, but also includes, "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences." 8 C.F.R. § 204.2(c)(2)(vii). In the instant case, the petitioner claimed that he had a relationship with his wife for two years prior to his April 11, 2007 entry into the United States. He further claimed that his "marital life was going well" until July 2, 2007 when they went to the immigration office in Jacksonville. Although the petitioner claimed that he had a good relationship with his wife and married her in good faith, the petitioner's testimony about his relationship with his wife centers around the alleged abuse.

¹ Name withheld to protect individual's identity.

He has not discussed in probative detail his and his wife's courtship, wedding ceremony, shared residence and experiences. Furthermore, the petitioner's sister does not discuss her observation of the petitioner's interactions with or feelings for his wife during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty. In his initial statement, the petitioner stated that his "biggest problem" was that he wanted to work and his wife "refused to file the immigration papers" on his behalf. He stated that he "was confined to do domestic house work such as cooking, cleaning of cars, and cleaning the yard." The petitioner asserted that his wife arranged for his trip to Fargo to visit his sister and mother, and purchased the bus ticket for him. He recounted that his wife took his passport and his driver's licenses when he traveled to Fargo. The petitioner stated that his trip to Fargo "was just a tactic to get rid of [him]." The petitioner asserted that his wife's claims in the temporary injunction petition that he "was pressuring her for a greencard" were "false." He stated that his wife "never filed an application for a greencard" on his behalf. He stated that he felt like he "was in the USA as a domestic slave doing house work." The petitioner concluded "[t]he reason why [his wife] lied and obtained the temporary injunction was to destroy [him] by sending [him] to jail." In his statement filed in response to the RFE, the petitioner further asserted that he was a victim of his wife's "constant verbal aggression and humiliation." He stated, "I was shocked when she bluntly told me that I don't need to work; all I have to do is to stay home, have sex with her and do my daily chores in the house like a servant, and this includes washing the cars, cook and take the children to school" The petitioner noted, "out of spite, she would start an argument with me, calling me names, that I was a gay, a thief, an assassin."

Contrary to the petitioner's claim that his wife would not allow him to file an application for a "green card," the record shows that the petitioner filed an adjustment application (Form I-485) prior to his departure to Fargo on February 15, 2008. Furthermore, the petitioner has not described in detail the "constant verbal aggression and humiliation" he alleges he suffered during his marriage. The petitioner's remaining claims regarding housework and child care do not demonstrate that his wife ever battered him or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner's sister attested to his troubled marriage, but her statement also fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. [REDACTED] briefly reiterated the petitioner's claims, but she did not describe witnessing any particular incident of abuse or otherwise explain the basis of her knowledge of the alleged abuse.

On appeal, counsel asserts that H-R-'s decision to file a petition for injunction for protection against domestic violence was "us[ing] the justice system to control [the petitioner] and keep him away." Counsel further asserts that the petitioner's wife obtained the injunction based on false information and used the legal system to control the petitioner. The relevant evidence does not show that the petitioner was controlled by his wife or that he was unable to contest the temporary injunction at the subsequent hearing. The record does not demonstrate that the petitioner's wife's actions involved threats of

violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel asserts that H-R- told the petitioner that “he does not have to work and that all he has to do is take care of the house and have sex with her.” Counsel asserts the director found the petitioner’s wife’s actions to not constitute extremely cruelty because the petitioner is a man. Counsel contends, “just because [the petitioner] is not a woman does not make such behavior on the part of [H-R-] acceptable.” Upon review of the record, the AAO finds that the director’s decision contains no indication of gender bias.

On appeal, counsel concludes that “it is misguided to think that a man who is kept in a house by an educated US citizen to cook, clean, drive children as a chauffer using a Haitian driver license, wash cars and just have sex with her is a happy camper.” Counsel contends that he “disagree[s] vehemently with the USCIS that such exploitation does not rise to the level of extreme cruelty.” Counsel claims, “[t]he burden of proof required in the determination of whether there is extreme cruelty is ‘any credible evidence’ relevant to the application.” Counsel is mistaken. For self-petitioning abused spouses, the statute prescribes an evidentiary standard, which mandates that USCIS “shall consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard is not equivalent to the petitioner’s burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, “the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency’s] sole discretion.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner’s credibility or meet the petitioner’s burden of proof.

In this case, counsel has failed to articulate how the relevant evidence demonstrates that the specific behaviors of the petitioner’s wife constituted extreme cruelty. The director correctly concluded that the incidents described by the petitioner and his sister do not constitute battery or extreme cruelty for immigration purposes as the record does not demonstrate that the petitioner’s wife forced or coerced the petitioner to comply with her requests. In sum, the relevant evidence does not establish that the petitioner’s wife’s behavior involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that he resided with his spouse. However, he has not overcome the director’s determination that he did not enter into the marriage in good faith and was not subjected battery or extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.