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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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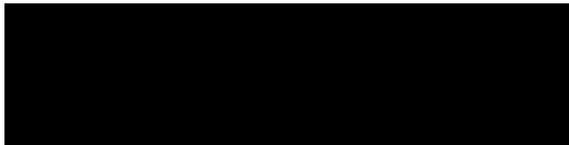
DATE: Office: VERMONT SERVICE CENTER FILE: 

JUN 02 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 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 Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

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 determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse, he is a person of good moral character, or that he had entered into the marriage in good faith. On appeal, counsel submits a statement. Counsel checks the box on the Form I-290B, Notice of Appeal or Motion, indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. To date, no further evidence or brief has been submitted. The record is considered complete.

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 based on his or her relationship to the abusive spouse, 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 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 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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 set forth 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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 native of Kuwait and a citizen of Jordan. He last entered the United States on February 18, 2004 on a B-1 visitor's visa with temporary authorization to remain in the United States until August 17, 2004. He married K-R-,¹ the claimed abusive United States citizen on September 12, 2007. On December 2, 2007, K-R- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The couple attended an interview before a United States Citizenship and Immigration Services' (USCIS) officer on April 10, 2008. On May 20, 2009, USCIS issued a Notice of Intent to Deny (NOID) the Form I-130 and after receiving no response, denied the Form I-130 on July 23, 2009. On June 26, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that he resided with K-R- from September 2007 to March 2009. On December 17, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by K-R-, that he is a person of good moral character, or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, and a statement.

Battery and Extreme Cruelty

The petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by K-R-. In the petitioner's June 15, 2009 personal statement he declared that K-R- started talking to other people in the apartment complex, he began to miss his new clothes, she started screaming and breaking stuff in the apartment, and he overheard her talking to some guy in Ohio who was encouraging her to divorce him. The petitioner stated that K-R- damaged the apartment, scratched his face, hit him more than once, and wrote bad words on the walls of the apartment. The petitioner also noted his belief that K-R- was cheating on him and that he did not learn that she had children until she asked him to go with her to see her kids where her mom was taking care of them.

The petitioner's brother, in a June 13, 2009 affidavit, stated that he had personally witnessed the petitioner's marriage abuse and he had seen his brother with a lot of scratches and bruises on his face and body several times and his brother told him the injuries were from his wife. The petitioner's brother also indicated that the petitioner's wife broke a lot of items and messed up

¹ Name withheld to protect the individual's identity.

the apartment. The petitioner's sister-in-law stated that she also saw the abuse the petitioner went through on a daily basis as mentioned in her husband's affidavit.

The petitioner provided a move out statement from the management of the claimed joint residence noting that the carpet had been replaced by the resident with another type of carpet as well as listing the outstanding charges on the lease.

Counsel also included a report prepared by [REDACTED], licensed clinical social worker, dated September 24, 2009. [REDACTED] noted that she met with the petitioner at his apartment on June 23, 2009. She indicated that the petitioner spoke excellent English but that he appeared reticent at times to discuss personal questions because he felt embarrassed and uncomfortable disclosing personal thoughts and feelings. [REDACTED] indicated that the petitioner reported that he initially lived in Houston, Texas with his brother but subsequently moved to Ohio to live with a cousin and worked in Ohio for two years. [REDACTED] also stated that the petitioner reported that six weeks after he married K-R- they moved to Houston, Texas and the couple lived in an apartment of their own for six or seven months before K-R- moved out. [REDACTED] also indicated that: the petitioner believed that his wife did not provide good answers at their April 10, 2008 immigration interview, even though he was not present when she was asked questions; he believed she was having an affair shortly before their breakup; the couple argued after he confronted K-R- about her affair and he left the apartment and when he returned the next day, the place was like a disaster; and the major damage to the apartment occurred in or about May 2008 and after K-R- inflicted the damage on the apartment, she returned to Ohio. [REDACTED] noted the second time she met with the petitioner, on September 22, 2009, the petitioner reported that K-R- had attempted to stab him and had scratched him on the face on numerous occasions. [REDACTED] noted that the petitioner was unable to remember when these incidences occurred and when asked about the scars on his face he reported that the scars were from scratches inflicted by K-R-. [REDACTED] placed the petitioner in the moderate to marked major depression category and noted that he had features of panic disorder. She also acknowledged that it is difficult to diagnose in one meeting and that she urged the petitioner to meet with a psychiatrist for a complete evaluation.

In response to the director's RFE, which noted discrepancies in the record regarding the petitioner's testimony to USCIS and to [REDACTED] the petitioner stated that K-R- became abusive towards him, "especially when [he] found out that she was cheating on [him]." The petitioner stated that she started scratching and hitting him, she was very controlling and abusive, and in March 2009, she approached him and attempted to stab him. He noted that he could not take it any more, especially after she destroyed the apartment. The petitioner declared that [REDACTED] report contained inaccuracies and that he did not live in Ohio, he only visited there, and he lived with his wife from September 2007 to March 2009 when she destroyed the apartment and he moved to another apartment. He stated his regret at previous errors and noted that he was heavily medicated and could not think straight and he does not know how [REDACTED] got her information.

The petitioner's brother, in a March 9, 2010 affidavit, indicated that he saw injuries on the petitioner's face and that the petitioner told him that his wife had done it and that later when the

two couples went to Galveston to swim, he saw injuries on the petitioner's chest and the petitioner told him that K-R- had done it. The petitioner's brother also indicated that when visiting the petitioner in March 2009, he saw the destruction to the apartment. In an affidavit signed by [REDACTED], the petitioner's cousin, [REDACTED] noted that he saw a cut on the petitioner's face one time and the petitioner said that his wife had done it and one day in March 2009, he went to check on the petitioner and saw the apartment was a total mess and the petitioner told him his wife had done it. [REDACTED] also noted that the petitioner had injuries on his face. In an affidavit signed by [REDACTED] also declared that he had seen a mark on the petitioner's face and the petitioner told him that his wife had done it and further that when the petitioner confronted K-R- regarding dating someone else, she hit him and messed up the apartment.

The petitioner also provided photographs of three discernable scars, two on his face and one on his arm.

The director determined that the petitioner had not provided consistent evidence that he was the victim of battery or extreme cruelty perpetrated by K-R-. On appeal, counsel for the petitioner asserts that the petitioner does not remember exact dates because of the trauma he suffered. Counsel contends that the evidence of abuse was observed by others who reported that they saw scratches on the petitioner's face. Counsel refers to the pictures previously submitted, noting the scars on the petitioner's arm and face, and asserts that the scars are a result of the abuse inflicted by the petitioner's wife.

Upon review of the record, the petitioner has not described any particular incident in detail that constitutes battery. The petitioner refers to being hit, scratched, and an attempt made to stab him. He fails to provide any of the surrounding circumstances or details regarding these allegations. The petitioner does not provide a consistent chronological timeline of any events and does not describe the interactions of the couple leading up to, during, or after the alleged incidences of battery. The record lacks any probative information regarding specific incidents of battery perpetrated by K-R-. Upon review of the photographs, there is no indication when they were taken, and are insufficient to establish that the scars were the result of scratches perpetrated by K-R-. The statements made by the petitioner's family and friends are also insufficient to establish that the petitioner was subjected to battery perpetrated by K-R-. The affiants do not indicate that they witnessed any instance of abuse and their statements that they saw injuries on the petitioner's face and body are not descriptive and are not related to particular incidents of abuse. The affiants, although indicating that the petitioner told them that his wife inflicted the injuries, do not include the necessary detail of the circumstances and timing of the incidents sufficient to establish battery occurred. The petitioner's curt response that his wife inflicted the alleged injuries, without further particulars, is insufficient to establish that he was the victim of battery perpetrated by K-R-.

Upon review of the evaluation prepared by [REDACTED] the events related to [REDACTED] are not only inconsistent with the petitioner's statements, but do not include the requisite information to establish the veracity of the petitioner's claims. The lack of detail regarding particular events or incidents is not excused by the petitioner's claim that he was heavily medicated. The AAO also

observes that the petitioner was interviewed by [REDACTED] on two occasions and [REDACTED] found the petitioner polite and his candid style of reporting very charming. [REDACTED] does not indicate that the petitioner was heavily medicated during the two interviews. The petitioner's statement that he does not know how [REDACTED] got her information significantly undermines any probative value of the evaluation. Thus, the evaluation lacks evidentiary value based on the petitioner's own statements. Moreover, [REDACTED] does not causally connect the petitioner's moderate depression to any specific incident or event of abuse occurring during the petitioner's marriage.

The petitioner fails to provide any detailed probative testimony regarding controlling or manipulative behavior perpetrated by K-R-. The petitioner has not provided probative evidence that he was subjected to verbal or mental abuse or that K-R-'s conduct constituted extreme cruelty. The photographs of the apartment and the move out statement do not provide the identifying details necessary to establish that the damage done was perpetrated by K-R-. As observed above, the petitioner's statements and the statements of others on his behalf lack detail and thus are insufficient to establish credibility. The general information supplied with little chronological timeline and inherent inconsistencies is insufficient to establish eligibility for this benefit. The petitioner has not provided credible testimony or other evidence that he has been subjected to extreme cruelty perpetrated by his spouse.

When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty. The petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by K-R-.

Good Moral Character

The petitioner provided a police clearance from the City of Houston, Texas indicating that he does not have an arrest record or history of violations in the City of Houston. As the initial evidence of record also indicated that the petitioner had resided in Ohio for two years, the director requested clearances from all places the petitioner had resided including any residence in Ohio. In response, the petitioner claimed that he had never lived in Ohio but had only visited the state. The director determined that the inconsistent information in the record regarding the petitioner's residences required the issuance of a police clearance from Ohio in order to establish the petitioner's good moral character and as the record did not contain such a clearance, the petitioner had not established this essential element.

On appeal, counsel for the petitioner reiterates that the petitioner had not resided in the State of Ohio but that a police clearance had been requested and would be provided to the AAO as soon as the clearance was received. Upon review of the record, the record does not include a police clearance from the State of Ohio; thus the petitioner's response on appeal does not overcome the director's decision. The petitioner has not established that he is a person of good moral character.

Good Faith Entry Into Marriage

The petitioner provided a cursory description of his initial meeting and subsequent interactions with K-R-. The petitioner, in his initial statement, declared that he “knew [his] wife back in Ohio,” he loved her from first sight and “we got married with good intention for everlasting marriage that is based on love and sharing.” A few sentences later in the petitioner’s June 15, 2009 statement, the petitioner acknowledges that he did not know about K-P-’s children. In the petitioner’s statements to [REDACTED] he admitted that he did not know K-P-’s birthday. He reported to [REDACTED] that he knew K-R- for three or four months before marrying and that her mother attended the wedding and six weeks after the wedding, the couple moved to Houston, Texas.

The petitioner provided November 20, 2007 affidavits from his brother and sister-in-law stating that the marriage was in “full sense of the word” because they knew the couple presently lived together and shared a home as a married couple. The petitioner provided a copy of a lease for an apartment on [REDACTED] with the term beginning November 16, 2007, a Comcast bill addressed to the petitioner at the [REDACTED] address dated March 24, 2008, and a depositor’s agreement showing an account had been opened on November 20, 2007 with a deposit of \$100.

In response to the director’s RFE, the petitioner provided a second statement dated March 9, 2010. The petitioner stated that he entered into his marriage with K-P- in good faith, he met her in 2007 when visiting his brother in Ohio, and after marriage the couple moved back to his apartment in Houston, Texas where they lived for one month until moving into a new apartment on [REDACTED]. In the second affidavit signed by the petitioner’s brother, his brother declared that the petitioner met K-R- during one of his visits to Ohio to see family members and that the petitioner decided to get married to K-P- but that he was unable to attend the petitioner’s wedding. In the affidavit of [REDACTED] [REDACTED] also declared that the petitioner married K-R- in good faith because the petitioner used to go out with K-R- and he was in love with her. In [REDACTED] affidavit, [REDACTED] also declared that in the beginning the petitioner loved K-R- and they all went together to many places including restaurants, hotels and the sea.

The director determined that the record was insufficient to establish that the petitioner entered into the marriage in good faith. Counsel for the petitioner asserts that one must look at the subjective state of mind when determining whether the marriage was valid at its inception. Counsel asserts that the fact that the petitioner could not remember his wife’s birthday was probably due to the trauma he suffered at her hands.

Upon review, the petitioner does not provide probative testimony regarding his courtship with K-R- or his interactions with K-R- except as it relates to the claim of abuse. He does not describe the couple’s mutual interests in detail, he does not describe her family in detail, he does not detail the couple’s daily routines, and he fails to provide any probative information for the record that assists in determining his intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). Simply stating that he married K-R- for love is insufficient to establish his good faith intent in entering into the marriage. Moreover, the petitioner’s

acknowledgment that he did not know about his wife's children until sometime after the couple was married and his failure to remember his wife's birthday are significant details that undermine his claim that he entered into the marriage in good faith. Likewise, the statements from his family and friends fail to provide any probative details regarding their observations of the petitioner's interactions with K-R- or his alleged good faith intent when entering into the marriage.

The copies of a lease, a utility bill addressed only to the petitioner, and a bank letter noting the couple established a joint bank account with \$100, do not establish the petitioner's intent when entering into the marriage. As the director observed, a joint bank account without evidence of the underlying transactions does not establish that the couple commingled assets and had established a life together. The lease provided is insufficient, as the petitioner failed to provide any probative information regarding the couple's cohabitation, other than as it related to the petitioner's claim that the apartment was destroyed by K-P-. Upon review, the record in this matter does not include sufficient probative evidence, even when considering the information in the aggregate, to establish that the petitioner entered into marriage with K-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Residence

Beyond the decision of the director, the record does not include sufficient evidence establishing that the petitioner and K-R- jointly resided together. Although the petitioner has provided a lease, the lease does not establish that K-R- resided at the [REDACTED] address indicated on the lease. The record includes inconsistent statements by the petitioner regarding when he was in Ohio, how long he stayed there, what the couple did after the marriage regarding their living arrangements, and how long K-R- allegedly resided in Texas. The record is rife with inconsistencies and lacks probative details regarding the use of the apartment by the couple, the routines of the couple within the apartment, and the circumstances of the couple living together in the apartment. There is no probative testimony or evidence that K-R- ever lived in Houston, Texas or that the couple jointly resided together in Ohio.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

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