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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

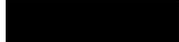


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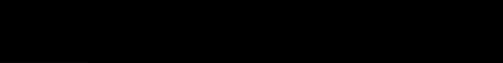
Date:

JUN 03 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:

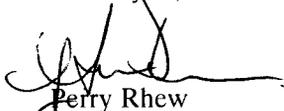
SELF-REPRESENTED

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 joint residence, abuse, good moral character, and good-faith entry into the marriage. On appeal, the petitioner submits a notarized, personal letter dated August 14, 2010; a letter dated August 23, 2010, from [REDACTED]; a second notarized letter from [REDACTED] dated August 16, 2010; a notarized letter dated August 20, 2010, from [REDACTED] and a Good Conduct Certificate processed on August 18, 2010, from The City of New York Police Department.

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:

(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 or the self-petitioner's child, 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 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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

(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 citizen of Trinidad and Tobago who entered the United States as a nonimmigrant visitor in 2000. On November 28, 2006, the petitioner married a U.S. citizen in New York. The petitioner filed the instant Form I-360 self-petition on March 15, 2010. The director subsequently issued a request for additional evidence (RFE) that the petitioner had terminated his prior marriage, that he had resided with his wife, that his wife had subjected him to battery or extreme cruelty during their marriage, and that he had married his wife in good faith. The petitioner submitted additional evidence. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite joint residence, abuse, good moral character, and good-faith entry into the marriage.

On appeal, the petitioner asserts that the relationship with his wife has left him mentally and emotionally traumatized and that she took all of the requested documentation with her when she left. 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.

Joint Residence

On the Form I-360, the petitioner stated that he lived with his spouse from August 2005 until December 2008. As discussed above, the petitioner and his wife were married on November 28, 2006. As such, the joint residence that took place prior to the marriage on November 28, 2006 does not count as joint residence under 8 C.F.R. § 204.2(c)(1). For the "last address at which you lived together . . ." and "the last date you lived together with that person at that address," the petitioner stated only [REDACTED]

In his March 5, 2010 statement submitted at the time of filing, the petitioner indicated that he had lived with his wife, though he did not provide any details, such as dates and addresses. The petitioner also stated that his wife ultimately changed the lock on her door and threw out his clothing in a black garbage bag.

In his June 7, 2010 statement submitted in response to the RFE, the petitioner stated that he was unable to provide the requested documentation because he was thrown out of the apartment and when he returned, his wife and "all proof of residence" were gone.

In his August 14, 2010 letter submitted on appeal, the petitioner states, in part, that: he moved in with his wife on August 13, 2005, and subsequently accepted her marriage proposal; and that his wife told him that she could not include him on any of the bills because she would lose her benefits and he was illegal.

In his June 7, 2010 letter submitted in response to the RFE, [REDACTED] stated, in part, that he had known the petitioner for the last five years as a parishioner, a congregation member, and an individual whom he had counseled. [REDACTED] also stated that the petitioner's wife took the petitioner into her house after his relatives had emotionally abused him.

In her June 9, 2010 letter submitted in response to the RFE, [REDACTED] stated, in part, that she had known the petitioner for many years and that the petitioner moved into his wife's apartment after he complained and cried about being abused by his relatives.

In her August 16, 2010 letter submitted on appeal, [REDACTED] states, in part, that: on Valentine's Day in 2008, the petitioner told her that his wife had "put him out of the apartment"; and that she had attended a party at the petitioner's wife's apartment on June 5, 2008, when she saw her punch the petitioner.

In his August 20, 2010 letter submitted on appeal, [REDACTED] states, in part, that: he had known the petitioner for over 12 years and that he also knew the petitioner's wife; and on January 5, 2009, the petitioner told him that he needed a place to stay because his wife had left him and taken most of his belongings.

The AAO acknowledges the petitioner's assertion that all of the evidence of his joint residence with his wife was gone after she kicked him out. A further review of the evidence, however, finds unexplained, inconsistent information. On the petition, the petitioner stated that he had lived with his wife from August 2005 until December 2008. However, the Certificate of Marriage Registration for the petitioner and his wife, dated November 28, 2006, lists different addresses for the petitioner and his wife. The petitioner's address is listed as [REDACTED] [REDACTED]", which is the same address listed for the petitioner on his August 14, 2010 letter submitted on appeal. The [REDACTED] address is also the same address listed on the August 20, 2010 letter from [REDACTED] who states on appeal that the petitioner lives in his basement apartment. As such, the evidence of record does not establish that the petitioner ever lived at the claimed joint address listed on the petition and listed on the Certificate of Marriage Registration as his wife's address: [REDACTED] [REDACTED]". The record contains no explanation for this inconsistent information. It is also noted that the statements submitted by the petitioner and on his behalf regarding the claimed joint residence are general and vague and provide minimal information pertinent to the circumstances of the petitioner's claimed joint residence with his wife. Consequently, the petitioner has not 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.

Battery or Extreme Cruelty

In his March 5, 2010 statement submitted at the time of filing, the petitioner stated, in part, that: his wife kicked him out of the marital bed, cursed at him, and withheld food from him if he returned home at the end of the week five dollars short from the odd jobs he worked; his wife threatened to call the police, make him serve time, and have him deported if he moved away from her; he lived in fear of his wife and was physically abused by her, as she hit him across the face with her open fist, and also hit him on four other occasions; his wife claimed that she did not want people to know that they were married or where she lived; and his wife ultimately changed the lock on her door and threw out his clothing in a black garbage bag.

In his June 7, 2010 statement submitted in response to the RFE, the petitioner stated that his wife threw him out of the apartment.

In his August 14, 2010 letter submitted on appeal, the petitioner states, in part, that: the abuse he previously could not reveal started on Labor Day of 2006, after he returned from a Labor Day party and his wife forced him to be a sex slave and to perform oral sex; he and his wife constantly fought because he did not want to engage in such behavior; his wife began to stay out all night and tell him that she had sex with other men because he was not good at performing oral sex; and such acts forced upon him left him so mentally and emotionally traumatized that he still cannot be with another woman.

In his June 7, 2010 letter submitted in response to the RFE, [REDACTED] stated, in part, that: he had counseled the petitioner for the last five years and that, with a lot of encouragement, the petitioner opened up to him; the petitioner's marriage deteriorated due to the abuse from his wife; and the petitioner described intimate details of his marital difficulties that were too graphic for him to discuss in his letter.

In her June 9, 2010 letter submitted in response to the RFE, [REDACTED] stated, in part, that the petitioner's wife put the petitioner down and during the Caribbean carnival called him an "ignorant Jackass."

In her August 16, 2010 letter submitted on appeal, [REDACTED] in part, that: at about 10:00 PM at a Christmas Eve party at her house in 2007, she saw the petitioner's wife "cuss" at the petitioner and slap him in front of all her guests when he did not put enough alcohol in her drink; during the same party, the petitioner's wife made the petitioner leave her house and insulted him by calling him "illegal" and "no good" and telling him that she was never going to help him get his "papers"; she saw the petitioner on Valentine's Day in 2008, after his wife "put him out" for the night because another man was coming over; she witnessed the petitioner's wife verbally abusing the petitioner on many occasions and she saw the petitioner's wife hit him with a cup and a book; and on June 5, 2008, she saw the petitioner's wife punch the petitioner in the face while at a party at the petitioner's wife's apartment.

In his August 23, 2010 letter submitted on appeal, [REDACTED] states, in part, that: he has known the petitioner as a member of his congregation for about three years, having met him through [REDACTED] who indicated that the petitioner had a "major depressive disorder" with symptoms that included crying spells, poor appetite, weight loss, and inability to sleep or function; the petitioner told him that his symptoms were due to mental stress and mental and sexual abuse from his wife; he began treating the petitioner with counseling and psychotherapy once a week for 30 to 45 minutes per session; and the petitioner reported difficulty functioning, lack of interest and energy, withdrawal from friends and family, inability to trust others, and lack of self-esteem due to his marital problems.

In his August 20, 2010 letter submitted on appeal, [REDACTED] states, in part, that: on January 5, 2009, he gave the petitioner a place to stay in his basement apartment after the petitioner's wife left him and took most of his belongings; and the petitioner told him about all the problems and abuse that he had endured from his wife.

The director determined that the petitioner had not established that his wife had subjected him to battery or extreme cruelty. Specifically, the director found that the statements from the petitioner

and on his behalf lacked sufficient detail 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). On appeal, the petitioner asserts that the relationship with his wife has left him mentally and emotionally traumatized.

The AAO acknowledges the letters from [REDACTED], who both stated that they provided counseling and/or psychotherapy to the petitioner. While [REDACTED] asserted that [REDACTED] Hans had indicated that the petitioner had a “major depressive disorder,” [REDACTED] in his June 7, 2010 letter did not identify himself as a reverend of any particular church or state that the petitioner suffered from a “major depressive disorder.” It is also noted that while both [REDACTED] indicated that the petitioner suffered from abuse by his wife, neither of them indicated that they ever witnessed the petitioner and his wife together. Nor did they provide any probative details regarding the petitioner’s relationship with his wife and their interactions with each other. In addition, while [REDACTED] indicated on appeal that the petitioner told him about all the problems and abuse he had suffered from his wife, [REDACTED] also did not indicate that he had ever witnessed the petitioner and his wife together or provide probative details regarding the petitioner’s relationship with his wife and their interactions with each other. It is also noted that the petitioner did not claim in any of his statements that anyone witnessed the claimed abuse from his wife. In fact, the petitioner stated in his initial statement that he was afraid for years to tell anyone about the abuse he had suffered. This information conflicts with the statement on appeal from [REDACTED] that she witnessed the petitioner’s wife slap the petitioner in front of all her party guests, hit him with a cup and a book, and punch him in the face at a party at the petitioner’s wife’s apartment. In sum, the relevant evidence in this case contains inconsistencies and deficiencies that diminish the probative value of the petitioner’s claims to having been subjected to battery or extreme cruelty.

We find no error in the director’s assessment of the relevant evidence. Although the petitioner indicated that his wife slapped him in the face, hit him on four other occasions, and forced him to be a sex slave, he has not provided the probative details of these events 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 Moral Character

The director determined that the petitioner's initial submission did not include any evidence to establish his good moral character and although the RFE did not request such evidence, as the petition was otherwise deniable, the issue of good moral character would not be discussed further. On appeal, the petitioner submits a Good Conduct Certificate processed on August 18, 2010, from The City of New York Police Department, indicating that he had no criminal record.

Primary evidence of good moral character is the self-petitioner's affidavit accompanied by a local police clearance or a state-issued criminal background check for every location where the petitioner has resided for at least six months during the three years preceding the filing of the petition. 8 C.F.R. § 204.2(c)(2)(v). The record in this case shows that the petitioner resided in New York during the three years preceding the filing of the petition. Although the petitioner has submitted a Good Conduct Certificate from The City of New York Police Department, he has not submitted an affidavit regarding his good moral character. Accordingly, the petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act

Good Faith Entry into Marriage

In his March 5, 2010 statement submitted at the time of filing, the petitioner stated that: he met his wife when he was being abused by his relatives with whom he was staying; he and his wife talked for hours about his abuse and became friends; the age difference between him and his wife was never an issue and they started to sleep together and she cooked for him; his wife claimed that she had a bank account in both of their names and that she could not add him to any of the accounts because he was illegal; and his wife ultimately changed the lock on her door and discarded his clothes in a black garbage bag.

In his June 7, 2010 statement submitted in response to the RFE, the petitioner stated that he was unable to provide the requested documentation because he was thrown out of the apartment and when he returned, his wife and "all proof of residence and any other info" were gone.

In his August 14, 2010 letter submitted on appeal, the petitioner states, in part, that: he moved in with his wife on August 13, 2005, and he subsequently accepted her marriage proposal; and that his wife told him that she could not include him on any of the bills because she would lose her benefits and he was illegal.

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). The petitioner, however, has submitted scant testimonial evidence to support a finding that he entered into his marriage in good faith. The petitioner has not submitted any evidence relating to his courtship with his wife, their decision to marry, wedding, and shared experiences, apart from the alleged abuse. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife 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 joint residence, abuse, good moral character, 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.