

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



B9

Date: JUN 08 2011 Office: VERMONT SERVICE CENTER

FILE: [REDACTED]
[REDACTED]

IN RE: Petitioner: [REDACTED]

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 cites to court decisions, stating that the petitioner was subjected to extreme cruelty by his wife and that the petitioner did not willfully misrepresent himself in regards to the Form I-130, Petition for Alien Relative, filed on his behalf. As supporting evidence, counsel submits: information from the website of the National Domestic Violence Hotline; articles from the Fall 2006 ASISTA publication related to the issue of extreme cruelty; an affidavit dated December 22, 2010, from the petitioner; and an affidavit dated December 14, 2010, from [REDACTED]

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 Gambia who was paroled into the United States on June 12, 2007, to resume his application for adjustment of status. The petitioner was married in 2003 to his first U.S. citizen spouse, and they were divorced in January 2006. A Form I-130, Petition for Alien Relative, filed on the petitioner's behalf by his first U.S. citizen spouse was denied due to abandonment. On February 24, 2006, the petitioner married his current U.S. citizen spouse, who is the claimed abuser. The petitioner's spouse subsequently filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner, and ultimately withdrew the petition. On July 2, 2008, the petitioner was served with a Notice to Appear for removal proceedings and remains in proceedings before the New York, New York Immigration Court.

The petitioner filed the instant Form I-360 self-petition on March 23, 2009. The director subsequently issued a request for additional evidence (RFE) that the petitioner's wife had subjected him to battery or extreme cruelty during their marriage, that he was a person of good moral character, and that he had married his wife in good faith. The director also requested that the petitioner explain the discrepancies in the record, namely, that the petitioner's prior marriage was not reflected on his current marriage certificate, that he did not admit to his prior marriage during his immigration interview, and that his supporting documentation included altered documents. 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 petition was denied in error, as the petitioner was subjected to extreme cruelty by his wife. Counsel also asserts that the petitioner did not willfully misrepresent himself by submitting "false" evidence because the petitioner's friend, not the petitioner, arranged for his wife's name to be added to the utility bills. 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 March 16, 2009 affidavit submitted at the time of filing, the petitioner stated, in part, that: he and his wife had a good marriage until August 2006; his wife quit her job and told him that her doctor had told her not to work, though she never showed the petitioner any proof of her disability; his wife was quick tempered, controlling, and jealous; his wife cursed at him when he did not answer his phone and accused him of seeing other women; his wife smashed the telephone into the television set when he told her that he did not like being cursed at; he became nervous and scared around his wife; his wife controlled his calls to [REDACTED] on one occasion, he had to sleep at a friend's house because his wife would not let him in their apartment; his wife hid his mail and when he went to [REDACTED] to visit his sick father, she misused the money he had designated for the rent and utilities; at the beginning of 2008, his wife had another man in their apartment when he arrived home from work, and when he told her not to allow him in their apartment anymore, she left the petitioner's clothing in the hallway, which she had also done on another occasion; in August 2007, his wife went to his workplace and cursed and yelled at him in front of his workers because he had not given her the money that she had asked for that morning; and he went to a health clinic from time to time and felt that his high blood pressure was due to the stress caused by his wife.

In his July 6, 2009 affidavit submitted in response to the Notice of Action, the petitioner stated, in part, that he felt that his wife purposely tried to deceive him by telling him that he would not have any problems with “immigration” when he left the United States to visit his ill father in Africa.

In his June 11, 2010 affidavit submitted in response to the RFE, the petitioner reiterated the information from his first affidavit and also stated, in part, that: his wife did not like him calling his relatives in [REDACTED]; his wife ordered him to call the IRS because they were taking out too much money from his paycheck and she became angry when he refused; his wife acted like she owned him and demanded that he call her whenever he went to the mosque; his wife threatened him on at least three occasions, that she would destroy his life, that he would not be good for anything, and that she would leave him; she yelled at him every day and he was afraid of her though he did not call the police because he did not have his “papers”; he felt sad and hopeless after his wife began to torment him; and he felt “dumb” and like a piece of garbage due to his wife’s criticism and belittling.

In his December 22, 2010 affidavit submitted on appeal, the petitioner reiterates the information from his previous affidavits and also states, in part, that: his wife attempted to isolate him from his relatives by trying to stop him from calling them; his wife glared at him and shook her head and body when they discussed his calls to [REDACTED], his wife wanted him to lie about his number of dependents so that the IRS would take less money from his paycheck; and he is unable to corroborate the incident of his wife’s appearing at his place of work when she yelled at him in front of his co-workers, because he has not worked there for about two years.

In her March 4, 2009 letter submitted at the time of filing, [REDACTED] stated, in part, that she had been the petitioner’s primary care physician since May 6, 2008, that the petitioner had been seen and treated for stress in their office, and that the petitioner had complained that his wife was the primary source of his stress.

In her February 7, 2010 affidavit submitted in response to the RFE, [REDACTED] stated, in part, that she interviewed the petitioner for one hour and for 45 minutes on January 8, 2010 and January 29, 2010, respectively. The petitioner reiterated the information from his affidavits to [REDACTED] and also reported disturbed sleep and nightmares once or twice weekly. [REDACTED] concluded that the petitioner’s account was “consistent with the clinical picture of an abusive relationship.”

In his August 4, 2009 affidavit submitted in response to the Notice of Action, [REDACTED] stated, in part, that: the petitioner’s wife stopped working a couple of months after their marriage and lied about her doctor having told her not to work; the petitioner’s wife demanded all the money that the petitioner could give her; and the petitioner had to work many hours to support himself and his wife and he did not receive anything in return.

In his September 1, 2009 affidavit submitted in response to the Notice of Action, [REDACTED] stated, in part, that: after August 2006, he saw the petitioner’s wife argue with the petitioner more and he mediated a few times to calm them down; the petitioner’s wife was controlling and suspicious that the petitioner was not faithful to her, which was not true; the petitioner and his wife fought often and she was nasty and cursed violently at him, whereupon he would remove the

In his December 22, 2010 affidavit submitted on appeal, the petitioner states, in part, that his goals in the marriage were to be happy, to have children, and to be in love.

In his August 4, 2009 affidavit submitted in response to the Notice of Action, [REDACTED] stated, in part, that: the petitioner told him in 2005 that he had met a girl whom he wanted to marry; and he went with the petitioner to the restaurant where the petitioner's wife worked and saw the petitioner and his wife smile at each other when they gave their order.

In his September 1, 2009 affidavit submitted in response to the Notice of Action, [REDACTED] stated, in part, that: he visited the petitioner and his wife at their apartment after they were married; the petitioner and his wife got along nicely from the beginning of their relationship until approximately August 2006; and the petitioner and his wife used to smile all the time and looked out for each other.

In his December 14, 2010 affidavit submitted on appeal, [REDACTED] stated, in part, that: he witnessed the good faith marriage of the petitioner and his wife; about once weekly, he visited the petitioner and his wife at their apartment after their marriage; he spent time with the petitioner and the petitioner's wife by cooking dinners together, going for walks, and watching television; they would all sit outside in front of his building in the summertime and cook together at both of their houses; the petitioner and his wife got along nicely while they cooked and told each other how to prepare the food; and the petitioner and his wife laughed, smiled, and played computer games.

The petitioner also submitted the following documentation: joint checking account statements from Chase for the petitioner and his wife covering the period from July 5 – September 11, 2008, reflecting minimal activity; a joint checking account statement from Washington Mutual for the petitioner and his wife covering a period of one day, September 11, 2006, also reflecting minimal activity; a Tax Return Transcript from the IRS addressed to the petitioner for the tax period ending on December 31, 2006, reflecting the petitioner's status as "Married Filing Separate"; life insurance policies issued to the petitioner and his wife on September 18, 2006 and paid to January 18, 2008, listing each other as the beneficiary; DirectTV/Cablevision bills for 2007 and 2008, addressed to the petitioner and his wife; photocopies of two envelopes addressed to the petitioner and his wife; and MCI bills addressed to the petitioner and his wife, dated 2008 and 2009.

Regarding the discrepancies discussed by the director, the petitioner states, in part, that: his previous marriage was not reflected on his marriage certificate because he trusted the town clerk to prepare it correctly; the bills dated 2006, which were submitted in connection with his I-130 interview on January 14, 2008, were altered by [REDACTED] without his knowledge; and he already explained that his wife would not file income taxes with him because she wanted to file with her father.

The petitioner's claims that the town clerk mistakenly omitted his previous marriage on his marriage certificate and that [REDACTED] altered the bills in connection with his I-130 interview, are equivocal and do not fully resolve the discrepancies in the record. Counsel also has not established that the altered documents submitted in connection with the petitioner's I-130 interview were an honest mistake and not material.

The petitioner's testimony and the affidavits submitted on his behalf fail to support a finding that he entered into his marriage in good faith. The testimony and affidavits are general and vague and

provide minimal information pertinent to the circumstances of the petitioner's courtship with his wife, their decision to get married, their wedding, and their shared experiences, apart from the alleged abuse. For example, the petitioner asserts that during their courtship, the petitioner and his wife spent time at her father's house watching movies or television and drinking soda or water. Mr. [REDACTED] asserts that he saw the petitioner and his wife smile at each other when they ordered their food. Mr. [REDACTED] asserts that they all cooked together and the petitioner and his wife laughed, smiled, and played computer games. This testimony, along with the other evidence in the record, does not establish the petitioner's good-faith entry into the marriage.

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 little probative evidence to support a finding that he entered into his marriage in good faith. Moreover, the inconsistencies and/or deficiencies, discussed above, and the lack of evidence in the record regarding the petitioner's courtship with his wife, decision to marry, wedding, and shared experiences, significantly detracts from the credibility of his claim. 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 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.