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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



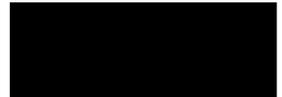
**U.S. Citizenship
and Immigration
Services**



B9

DATE: JUN 28 2011 OFFICE: VERMONT SERVICE CENTER

FILE:

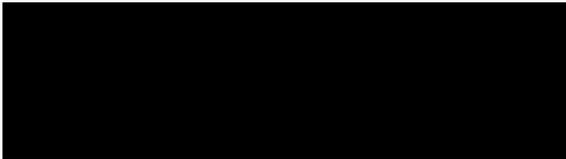


IN RE:



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:

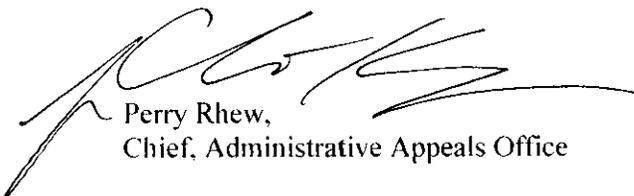


INSTRUCTIONS:

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 service center 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 a United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that he shared a joint residence with his former wife; (2) that his former wife subjected him to battery or extreme cruelty during their marriage; and (3) that he married his former wife in good faith. On appeal, counsel submits a memorandum of law and copies of previously-submitted documentation.

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 . . . 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 standard and 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.
- * * *
- (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, a citizen of Barbados, married G-B-¹ a citizen of the United States, on November 3, 2006, and they divorced on April 17, 2009. He filed the instant Form I-360 on July 15, 2008. The director issued a subsequent request for additional evidence and notice of intent to deny (NOID) the petition and the petitioner, through counsel, filed timely responses to both. After considering the evidence of record, including counsel's responses to the director's notices, the director denied the petition on January 15, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

Joint Residence

The petitioner stated on the Form I-360 that he resided with G-B- from December 2006 until March 2007, and that during this time they lived together at [REDACTED]. The petitioner stated in his December 7, 2009 self-affidavit that because he and G-B- resided together for a short period of time, he has very little documentary evidence of their joint residence. While counsel correctly asserts on appeal that we must carefully evaluate the testimony of the petitioner, his generalized assertions do not meaningfully discuss the petitioner's allegedly joint residence with G-B- apart from the alleged abuse. For example, the petitioner did not describe the former couple's residence, their furnishings, any jointly-owned belongings, their neighborhood, or any of their shared, residential routines. Nor did the petitioner's affiants provide such information. Although [REDACTED] indicated that the couple was living together, neither offered any meaningful details about the allegedly joint residence. Moreover, [REDACTED] testimony regarding the allegedly joint residence conflicted with that of the petitioner: she stated that the couple began

¹ Name withheld to protect individual's identity.

[REDACTED] did not clearly indicate the correct spelling of her surname in her November 10, 2009 letter.

living together two months after meeting one another, indicating that the joint residence began in May 2006, while the petitioner stated on the Form I-360 that it began in December 2006.

Nor does the relevant documentary evidence establish that the petitioner resided with G-B-. Although the February 7, 2007 letter from HSBC Bank indicated the couple was living together at [REDACTED], it also indicated that G-B- and the petitioner opened their joint banking account in November 2004. However, the petitioner claimed that he did not meet G-B- until March 2006. The remaining relevant documentary evidence, including the copies of mailers, medical paperwork, identification cards, and tax returns are not evidence that the petitioner resided with G-B- because none of these items name both G-B- and the petitioner.

On appeal, counsel asserts that the petitioner was hospitalized twice during the marriage and cites a case in which a hospice was considered to be a dwelling covered by the Fair Housing Act (FHA). Whether periods of hospitalization count as "dwelling" under the FHA is irrelevant to the residence requirement at section 204(a)(1)(A)(iii)(II)(dd) of the Act. While counsel is correct that the statute and regulations do not prescribe any minimum period of joint residence, counsel fails to account for the lack of relevant, credible evidence that the petitioner resided with his former wife for any amount of time.

Considered in the aggregate, the relevant evidence fails to establish that the petitioner resided with G-B-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In his December 7, 2009 self-affidavit, the petitioner stated that the couple's relationship went well until he was diagnosed with sarcoidosis. According to the petitioner, G-B- became angry rather than sympathetic to his condition when he told her that smoking in the apartment made it hard for him to breathe. He recounted that on days when he felt too weak to get up out of bed, G-B- told him that unless he got out of bed and bought things for her, he would not get a "green card." The petitioner stated that he was diagnosed with thrombocytopenia a month after being diagnosed with sarcoidosis. He was rushed to the hospital, and G-B- did not come to visit him. When he returned home, he found that G-B- had locked him out of the house, leaving him homeless. He stated that she also began telling people that he had physically abused her. In her November 27, 2009 letter, [REDACTED] stated that the petitioner told her that G-B- was telling people he abused her. The petitioner also submitted paperwork regarding his medical conditions.

When considered in the aggregate, the relevant evidence fails to establish that G-B- subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner does not allege, and the record does not demonstrate, that the petitioner was subjected to battery perpetrated by G-B- during their marriage.

Nor has the petitioner established that G-B-'s behavior constituted extreme cruelty. To qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the non-physical cruelty be extreme. *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 petitioner's account of G-B-'s threats to his immigration status lack probative details regarding specific incidents of such behavior, and the other actions of G-B- described by the petitioner and her affiants are not comparable to types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty. As none of the documentation regarding the petitioner's medical condition links any of the petitioner's health issues to any behavior by G-B-, it does not support counsel's assertion made on appeal that G-B-'s actions worsened his condition. Nor does the record support counsel's assertion made on appeal that G-B-'s actions caused the petitioner to lose his health insurance coverage and become homeless.

The petitioner failed to establish that he was subjected to battery or extreme cruelty perpetrated by G-B- during their marriage, as required by section 204(a)(1)(A)(ii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In his December 7, 2009 self-affidavit, the petitioner stated that he met G-B- through a mutual friend in March 2006 and that during their courtship they celebrated their birthdays; visited family members; and ate at restaurants. However, the petitioner's testimony does not establish that he entered into marriage with G-B- in good faith, as he failed to provide any detailed, probative information about their relationship. For example, he provided no specific information about their first introductions; their decision to date; their courtship; their decision to marry; their wedding; or any of their other shared experiences.

Nor does the other testimonial evidence of record establish that the petitioner entered into marriage with G-B- in good faith. Although [REDACTED] stated that she met G-B- while G-B- and the petitioner were dating, she provided no further information. In similar fashion, [REDACTED] statement that G-B- referred to the petitioner as her husband provides no insight into the relationship.

[REDACTED] stated that she introduced G-B- and the petitioner to one another, and that "it was love at first sight." She briefly recounted that the couple went to a restaurant on their first date and the petitioner did not eat because he was nervous and that she helped the couple plan their wedding celebration. However, [REDACTED]'s brief statements are insufficient to establish that the petitioner married G-B- in good faith.

Nor does the documentary evidence of record establish that the petitioner married G-B- in good faith. The record lacks evidence that both G-B- and the petitioner accessed, and used, the joint bank account or that it was used to fund any of their joint expenses. The picture of the couple indicates only that G-B- and the petitioner were together on a single occasion. Contrary to counsel's assertion on appeal, the documentation indicating that G-B- carried the petitioner as a dependent on her health insurance policy does not demonstrate that he married her in good faith. That G-B- opted to place the petitioner on her policy speaks to her intentions, not those of the petitioner.

The petitioner has failed to establish that he married G-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determination that he did not reside with G-B-; that G-B- did not subject him to battery or extreme cruelty during their marriage; and that he did not marry G-B- in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and his petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.