

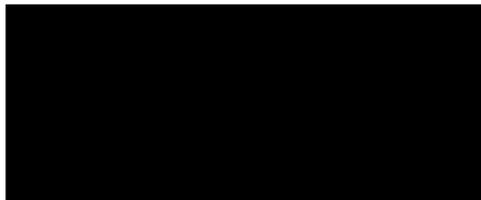
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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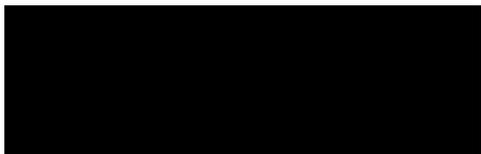
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FILE:  Office: VERMONT SERVICE CENTER Date **MAR 21 2011**

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:

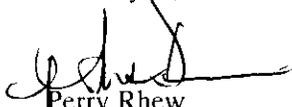


INSTRUCTIONS:

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 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 a United States citizen.

The director denied the petition for failure to establish the requisite good-faith entry into the marriage. On appeal, counsel submits a brief asserting that the petitioner submitted sufficient credible evidence that he married his wife in good faith.

Applicable Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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:

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:

(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.

* * *

(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 Kenya who entered the United States in 2003. On June 8, 2007, he married a U.S. citizen in Massachusetts. The petitioner's wife filed an alien relative immigrant petition on the petitioner's behalf, which was denied on August 27, 2008. The petitioner filed the instant Form I-360 self-petition on July 7, 2008. The petitioner and his wife were divorced on August 18, 2008. The director subsequently issued a request for evidence (RFE) that the petitioner had resided with his wife, that his wife had subjected him to battery or extreme cruelty, and that he married his wife in good faith. The director found the petitioner's response to the RFE insufficient and denied the petition because he had not established that he married his wife in good faith.

On appeal, counsel asserts that the petitioner married his wife in good faith. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's brief and the assertions on appeal do not overcome the director's ground for denial of the petition and the appeal will be dismissed.

Good Faith Entry into Marriage

As evidence of his good-faith marriage, the petitioner initially submitted an affidavit dated June 27, 2008. The petitioner stated that: in December 2006, he met his wife at a party in Worcester, Massachusetts, and within the same week, he drove to Worcester with a friend to take his wife on their first date, which entailed a movie and dinner; as his wife lived in Worcester and he in Lowell, it was difficult for him to visit her, so she would take the bus to visit him; he proposed to her after five months by surprising her with a ring inside a cookie; after their wedding at the [REDACTED] they hosted a party for some friends "at the house"; and his wife moved in with him and his brother after getting married.

The petitioner also submitted affidavits from two friends. [REDACTED] stated, in part, that the petitioner met his future wife at his sister's party and that he "would always drop [the petitioner] off at [her] house in Worcester" because the petitioner did not have a car. [REDACTED] stated, in part, that: the petitioner told him that he met a nice and beautiful girl at a party; he accompanied the petitioner on their first date and knew it might lead to marriage because they held hands and kept looking at each other; he attended their wedding reception and "did not doubt for a second [they]

were actually in love”; he “knew when [the petitioner] moved in with her in Worcester”; and the petitioner “loved [his wife] deeply and seemed very happy.”

The petitioner also submitted: copies of four envelopes addressed to the petitioner and/or his wife; copies of power and cable bills addressed to the petitioner and/or his wife; photographs of the petitioner with his wife; and an evaluation from [REDACTED] who reported that after their wedding, the petitioner and his wife began to live together in the petitioner’s apartment in Lowell, Massachusetts.

In response to the director’s RFE, the petitioner submitted a second affidavit dated September 24, 2009. The petitioner stated that his wife moved in with him and his brother at [REDACTED] Massachusetts, shortly after their wedding, where they lived until October 2007, with the exception of a couple of weeks in September 2007, when they lived at his wife’s old address in Worcester.

The petitioner also submitted an affidavit from his apartment manager and a second affidavit from his friend, [REDACTED]. The manager of the “Stackpole” apartment in Lowell, Massachusetts, stated, in part, that the petitioner was a tenant of the “[REDACTED]” property since 2006, and that in June 2007, the petitioner talked to him about adding his wife to the lease. He also stated that around September 2007, the petitioner and his wife “left for some weeks” because his wife had an ongoing lease in Worcester, Massachusetts, but they “came right back saying that things had not really worked out . . .” Simon Kihugu stated, in part, that he used to visit the petitioner and his wife at their “Stackpole” apartment, where they played chess, drafts, cards, and monopoly. He also stated that he visited the petitioner and his wife a couple of times in Worcester, Massachusetts.

The petitioner also submitted a greeting card sent by him to his wife.

The director determined that the relevant evidence failed to meet the petitioner’s burden of proof to establish the requisite good-faith entry into the marriage. The director also noted the affidavits focused primarily on the abusive aspects of the relationship. On appeal, counsel states that the evidence, including the affidavits from the petitioner, his friends, and his landlord, along with the joint utility bills, the evidence of a shared residence, and a card sent by the petitioner to his wife, clearly demonstrates that the petitioner entered into his marriage in good faith.

We find no error in the director’s assessment of the relevant evidence. 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 submitted by the petitioner and on his behalf is general and vague and provides 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. In addition, the record contains inconsistencies and/or deficiencies. For example, Simon Kihugu stated in his first affidavit that after the petitioner met his future wife, he “would always drop [the petitioner] off at [her] house in Worcester” because the petitioner did not have a car. This conflicts with the petitioner’s first affidavit, in which he stated that, as it was difficult for him to visit his future wife, she would take the bus from Worcester to visit him in Lowell. In addition, [REDACTED] affidavit indicated that the petitioner moved in with his wife in Worcester after their wedding, which conflicts with the petitioner’s own statement that his wife moved in with

him and his brother in [REDACTED] after their wedding. It is also noted that, in order to explain the discrepancies related to the claimed joint address pointed out by the director in the RFE, the petitioner submitted additional documentation claiming that he had moved in with his wife for a brief period in September 2007. His claim, however, is not corroborated in the detailed evaluation from [REDACTED] in which she reported only that the petitioner and his wife lived together in his apartment in Lowell, Massachusetts. Moreover, the petitioner's claim of him and his wife moving briefly to Worcester, Massachusetts in September 2007, is not corroborated in any of the testimony prior to the director's RFE. The photographs confirm that the petitioner and his wife were pictured together, but these documents, along with the other evidence in the record, do not establish the petitioner's good-faith entry into the marriage.

In this case, we do not find the petitioner's evidence sufficient to meet his burden of proof. The relevant evidence fails to demonstrate that the petitioner married his wife in good faith, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(ix). The petitioner also has not resolved the inconsistencies and/or deficiencies discussed herein that diminish the evidentiary value of his testimony and the testimony on his behalf. Accordingly, the AAO concurs with the findings of the director that the petitioner failed to establish that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.