

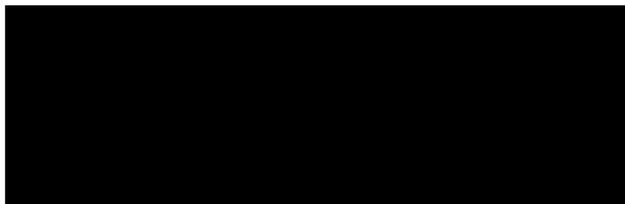
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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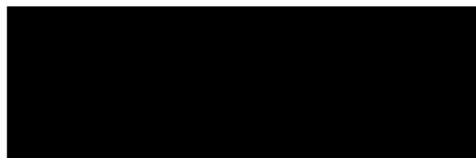
MAY 02 2011
IN RE:

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 a United States citizen. On appeal, counsel submits a brief.

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.

* * *

(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.

* * *

(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 and citizen of the Philippines. He entered the United States on October 31, 2007 on an H-2B visa which expired on September 10, 2008. He married J-R-,¹ the claimed abusive United States citizen on November 6, 2008 in Florida. On May 15, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that he resided with J-R- from November 2008 to December 2008. On January 6, 2010, 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 J-R-. Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

Battery or Extreme Cruelty

In the petitioner's May 1, 2009 personal affidavit, he declared that after his marriage on November 6, 2008, his wife told him she had to start rehabilitation on November 14, 2008 to avoid going to jail and asked that he pay for the rehabilitation which cost about \$6,000. The petitioner noted that his wife also asked that he pay \$500 for rent on her apartment which he paid. The petitioner indicated that J-R- was released from rehabilitation on December 15, 2008 and he picked her up from her mother's house, but his wife told him to drop her off at her new apartment. The petitioner stated that he later tried to visit J-R- at her new apartment and discovered that she was living there with her ex-boyfriend and that they told him to leave them alone and J-R-'s ex-boyfriend threatened him. The petitioner stated further that J-R- asked him to pick up her car from the mechanic and pay the bill and on December 21, 2008, he made a partial payment and asked her to come back and live with him and she refused. The petitioner indicated further that J-R- asked for rent for her new apartment but he did not pay it. The petitioner declared he does not know why it took him so long to realize that J-R- never cared for him but was just using him for money.

The petitioner provided an April 21, 2009 statement signed by J-R- wherein she declared that she married the petitioner in good faith and that they lived together from November 6, 2008 to November 11, 2008, and that she had asked the petitioner to pay for her rehabilitation so she would not have to go to jail for three years.

¹ Name withheld to protect the individual's identity.

In response to the director's RFE, counsel for the petitioner submitted a March 14, 2010 evaluation prepared by [REDACTED], licensed mental health counselor. [REDACTED] noted that she met with the petitioner on three occasions to address his feelings of depression and anxiety regarding the loss of his relationship with his wife. [REDACTED] indicated that the petitioner expressed his feelings of hurt and sadness regarding his wife's relapse into drug use and her behavior following her rehabilitation. [REDACTED] further noted that the petitioner reported he had been prescribed psychotropic medications under the supervision of his primary care physician.

Based on the information in the record, the director determined that the petitioner had not provided evidence that he had been subjected to battery or extreme cruelty as defined in the statute and regulation.

On appeal, counsel for the petitioner asserts that the petitioner's wife planned and entered marriage for the sole purpose of financially exploiting him, connived from the petitioner \$6,500 for her rehabilitation program, coerced the petitioner into paying for her car repair and for rent for her apartment while she was in rehabilitation, and coerced the petitioner to pay her rent after rehabilitation which the petitioner did not pay. Counsel contends that J-R-'s acts are within the purview of the regulatory definition of extreme cruelty as psychological or sexual abuse or exploitation, including economic coercion or control. We disagree.

The petitioner's statements do not indicate that he was coerced into making payments for his wife's rehabilitation, her rent either before or after her rehabilitation, or her car repairs. Rather, the record reveals that the petitioner paid the rehabilitation fee, the partial payment for car repair, and rent on his wife's apartment willingly and when his wife refused to further participate in the marital façade, he refused to continue assisting her financially. The record does not support counsel's contention that J-R-'s non-physical acts of asking for money were accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. The record is simply insufficient in this regard.

Upon review of the evaluation prepared by [REDACTED] does not identify any behavior perpetrated by J-R- that includes actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. She does not identify specific instances of abuse that constitute battery or extreme cruelty as set out in the regulation and statute. Her assessment is that the petitioner's depression and anxiety are connected to the loss of his relationship with his wife, not that his symptoms are connected to any battery or extreme cruelty to which he may have been subjected.

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 does not provide testimony that demonstrates he was the victim of any act or threatened act of physical violence or extreme cruelty, that R-R-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over him. The petitioner's statements do not establish that J-R-'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 J-R-'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)). In this matter, the record presented lacks sufficient information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse.

Residence

Beyond the decision of the director, the petitioner has not established that he jointly resided with J-R- during marriage. The petitioner stated that on the Form I-360 that he resided with J-R- from November 6, 2008 to December 2008. In the petitioner's spouse's statement, she indicated that she resided with the petitioner from November 6, 2008 to November 11, 2008. In a statement signed by the petitioner's uncle, his uncle indicates that the petitioner and J-R- resided with him at his address since November 6, 2008. However, the petitioner indicates that he was requested to and paid rent on his wife's separate apartment prior to her entering rehabilitation. Thus, at the time she entered rehabilitation, it appears that J-R- had not planned or actually moved into the petitioner's residence. The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. Section 101(a)(33) of the Act. The record is insufficient to establish that J-R-'s primary place of abode was at the petitioner's established residence. As such, the current record does not establish that the petitioner and J-R- jointly resided at the address noted on the Form I-360. For this additional reason, the petition will not be approved.

Good Faith Entry Into Marriage

Also beyond the director's decision, the petitioner provided a cursory description of his initial meeting and subsequent interaction with J-R-. In his statement the petitioner indicated that he met J-R- at a club where she worked as a stripper, they dated for four months, and on October 31, 2008, he proposed, and they were married on November 6, 2008. The director pointed out the inconsistency in the petitioner's statement regarding the length of time the petitioner dated J-R- prior to marriage but the petitioner did not provide a clarifying statement. Although the petitioner declared that he fell in love with J-R- the first time he met her and provided a general statement regarding dating J-R-, his statement does not include the probative details necessary to establish that he entered into the marriage in good faith.

In addition to the petitioner's statement and the statement of his wife, the petitioner provided photographs and statements from friends and family. The photographs do not include identifying information and show only that the couple was together on their wedding day and on other unidentified occasions; photographs however, fail to establish the petitioner's intent when entering into the marriage. The declarants state generally that they attended the wedding or

visited the couple, but provide no probative details regarding their observations of the petitioner's allegedly good faith entry into marriage with J-R-.

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). Upon review of the totality of the evidence in the record, the petitioner has not described the couple's mutual interests, he has not described the family circumstances in detail, he has not provided information regarding their daily routines, and he has not provided any probative information for the record that assists in determining his intent when entering into the marriage. In this matter the petitioner has not set forth his intent in probative detail in a statement to United States Citizenship and Immigration Services (USCIS) and the record does not include sufficient evidence that the couple established a life together. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with J-R- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Authority of the AAO

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.