

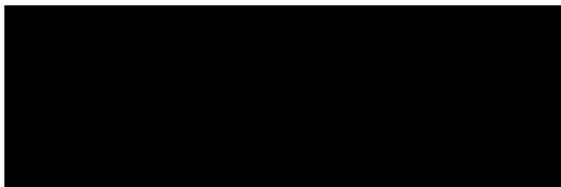
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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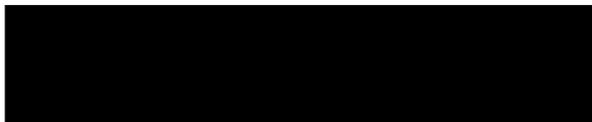
Date: **MAY 18 2011**

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:

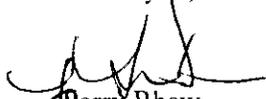


INSTRUCTIONS:

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 Director, Vermont Service Center, (“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 pursuant to 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a four-paragraph statement and additional evidence.

Relevant 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 further explicated 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 further explicated 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.

* * *

(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.

* * *

(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.

* * *

(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 is a citizen of Egypt who entered the United States on February 6, 2000, as a nonimmigrant visitor. The petitioner married a U.S. citizen on December 18, 2000 in Poughkeepsie, New York. After U.S. Citizenship and Immigration Services (USCIS) denied the first petition for alien relative (Form I-130), filed by the petitioner's wife on his behalf and the petitioner's corresponding application to adjust status (Form I-485), the petitioner was charged with remaining in the United States beyond his period of authorized stay and placed in removal proceedings.¹

The petitioner filed the instant Form I-360 on August 13, 2008. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage and his wife's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief statement, a letter from the petitioner's psychiatrist and additional tax records. Counsel asserts that the director erroneously deprecated the value of the evidence submitted below and counsel requests "an independent review." Counsel indicated that a brief or additional evidence would be submitted within 30 days, however, to date, over eight months later, the AAO has received no brief or further evidence from counsel or the petitioner.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his first affidavit, dated August 4, 2008, the petitioner stated that he met his wife in Poughkeepsie shortly after he arrived in the United States. He briefly recounted, "I fell in love with her and we dated for about three months. I was so infatuated with her that I decided to marry her in December of 2000." The petitioner stated that he loved his wife, wanted to have children with her and wanted to care for her daughter from a previous relationship. He reported that "[t]hings were alright for a while" until she started to change. The petitioner also stated, "I was so much in love with her that I did not really take time to understand and observed [sic] her character." In response to the

¹ The petitioner remains in removal proceedings before the New York City Immigration Court and his next hearing is scheduled for June 7, 2011. The petitioner's spouse filed a second Form I-130 petition on his behalf, which was denied on September 5, 2008 due to the couple's failure to appear for an interview scheduled on July 24, 2008.

RFE, the petitioner submitted a second affidavit, dated March 15, 2010, in which he repeated his earlier statements and added that he met his wife in June 2000 and that they “lived together in peace and happiness for about a year” before she began to change. The petitioner did not further describe how he met his wife, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

In response to the RFE, the petitioner also submitted letters from three friends who briefly discussed the petitioner’s marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner’s good faith in entering the relationship. [REDACTED] stated that he met with the petitioner and his wife “on two occasions to mediate a problem they were having. [The] petitioner worked tirelessly to take care of his family and to bring peace and stability to his home.” [REDACTED] described the petitioner’s marriage as “dysfunctional” and briefly asserts that the petitioner “still loves his wife very much and hopes that she might yet return the love, respect and loyalty he has shown her.” [REDACTED] stated that he repeatedly advised the petitioner to separate from his wife, but the petitioner remained with her “due to his sense of duty, responsibility, and love for his wife.” The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married his wife in good faith.

The director also accurately assessed the relevant documents submitted below. The petitioner initially submitted unsigned, joint federal income tax returns for himself and his wife for the years 2003 through 2007. In response to the RFE in which the director noted that the returns were unsigned and the record contained no evidence that they had been filed with the Internal Revenue Service (IRS), the petitioner submitted an IRS transcript for joint returns filed with his wife for 2006 and 2007. On appeal, the petitioner submits a copy of an amended 2002 IRS Form 1040X listing both his and his wife’s names, but signed only by his wife in 2004 and stating, “client originally filed married filing separate and would like to file as married filing joint.” The record also contains: two joint bank account statements dated shortly before and after the petitioner stated that he and his wife separated in July 2008 and a confirmation that the account was closed on July 11, 2008 with a balance of zero; one cable television service order dated July 2, 2008 in his wife’s name only; and three, undated photographs of the petitioner and his wife taken on two, unidentified occasions.

On appeal, the petitioner submits a September 8, 2010 letter from his psychiatrist, [REDACTED] [REDACTED] states that the petitioner was very much in love with his wife when they married and “he devoted himself to taking care of his new family, working hard . . . to provide for her . . . and to also take care of her three children.” [REDACTED] brief assertion is of little probative value and his reference to the three children of the petitioner’s wife is inconsistent with the petitioner’s affidavits in which he indicates that his wife had only one child.

On appeal, counsel briefly asserts that the petitioner “submitted proof of the bonafides of [his] marriage,” but counsel does not specifically identify any error in the director’s determination that the petitioner did not enter his marriage in good faith. A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director’s determination. The relevant documents show that the petitioner and his wife jointly filed federal income tax returns in 2006 and 2007, briefly held a joint bank account shortly before and after their separation, and were photographed together on two, unspecified occasions. In his affidavits, the petitioner briefly asserts his love for his wife, but does

not describe their courtship, wedding, joint residence or any of their other shared experiences, apart from the alleged abuse. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for his wife during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate 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.

Joint Residence

Beyond the decision of the director, the record also fails to demonstrate that the petitioner resided with his wife. On the Form I-360, the petitioner stated that he lived with his wife from November 2000 to July 2008 and that their last joint address was an apartment on [REDACTED] in [REDACTED] New York. However, none of the joint tax returns or bank statements list this address. The joint documents list a post office box and three other addresses, none of which the petitioner mentions in either of his affidavits. The only document in the record with the [REDACTED] Street address is the cable television service order dated in July 2008 when the petitioner reported separating from his wife. The order lists only the petitioner's wife's name and is not signed by her or the petitioner.

In his affidavits, the petitioner does not specify the dates or addresses of his residence with his wife and he does not describe their home(s) or shared residential routines in any detail, apart from the alleged abuse. The petitioner's friends do not describe any visit to his and his wife's residence(s) and the three photographs are not identified as having been taken at any specific residence that the petitioner shared with his wife. Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his first affidavit, the petitioner stated that his wife lied to him about her ability to have more children, had extramarital affairs, had loud parties at their home, incurred large telephone bills and overdrew their checking account. The petitioner also recounted that his wife would sometimes go to clubs where she would have other men call him and make sexually explicit comments about his wife while ridiculing him. The petitioner recalled that his wife repeatedly told him she did not love him and that she did not care if he got deported. The petitioner concluded that his mental illness was caused by the emotional pain and mental torture his wife inflicted upon him. In his second affidavit, the petitioner reiterated his prior statements and added that his wife often left him alone for days without calling him and that she would warn him not to complain about the parties she held at their home by threatening his immigration status. The petitioner's statements do not indicate that his wife ever battered him or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner's friends attested to his troubled marriage, but their statements also fail to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. [REDACTED] stated that the

petitioner's wife did "much to foil" his goal of becoming an American citizen and that the petitioner endured "several hardships related to his dysfunctional family life," including his treatment for depression. [REDACTED] also attested to the petitioner's "dysfunctional marriage" and noted that the petitioner's wife obstructed his immigration process and was disrespectful. [REDACTED] concluded that the petitioner's "depression is mainly due to his wife's betrayal." [REDACTED] similarly remarked on how the petitioner's wife was "often uncooperative in his pursuance of American citizenship," which "put immeasurable stress and anxiety on [the petitioner] leading ultimately to h[im] being interned for depression and paranoia.

The record contains letters from three doctors which confirm that the petitioner has suffered from depression during his marriage. An undated letter addressed to the New York City Immigration Court from [REDACTED] confirms that the petitioner was hospitalized on April 3, 2007 and would be unable to attend an immigration court hearing scheduled for April 24, 2007. [REDACTED] did not state the reason for the petitioner's hospitalization or provide any further, probative information. In an August 6, 2008 letter, [REDACTED] stated that he had been treating the petitioner since May 3, 2007 and that "[m]ost of his issues have centered around his dissatisfaction with the way his wife has been treating him." [REDACTED] noted that the petitioner was mentally stable and that his prognosis was excellent.

In response to the RFE, the petitioner submitted a March 3, 2010 letter from [REDACTED] who stated that the petitioner suffered a single episode of major depressive disorder in 2008 and that "[h]is symptoms of depression and irrational thinking developed in reaction to prolonged marital conflict which caused considerable stress," which eventually led to the petitioner's hospitalization for depression and paranoid thinking.² [REDACTED] noted that the petitioner responded well to medication and therapy "and is now free of symptoms." In his previously mentioned letter submitted on appeal, [REDACTED] opined that the petitioner's single episode of mental illness "was caused by persistent cruel treatment by a wife who did not love him and who betrayed him and then tortured him emotionally." In particular, [REDACTED] described one incident where the petitioner lost control of his car while listening to man make sexually explicit comments about his wife over the telephone. However, the petitioner himself does not mention this incident in either of his affidavits.

The director concluded that the relevant evidence submitted below established that the petitioner's wife engaged in behavior which led to the petitioner's depression and the breakdown of his marriage, but that the record did not establish that the petitioner's wife subjected him to battery or extreme cruelty. On appeal, counsel references the petitioner's wife's infidelity, extramarital sexual encounters and threats of deportation and concludes "that to me is abuse." Counsel fails to articulate, however, how the relevant evidence demonstrates that these specific behaviors of the petitioner's wife constituted extreme cruelty.³ The affidavits of the petitioner and his friends attest to his troubled marriage, his wife's

² Dr. [REDACTED] chronology is inconsistent with [REDACTED] letter confirming the petitioner's hospitalization in 2007, not 2008 and the record contains no other evidence of the petitioner's hospitalization in 2008.

³ For example, while threats of deportation may be a form of extreme cruelty in certain situations, counsel fails to acknowledge that in this case, the record contains no probative account of such threats. The petitioner's brief references to his wife's statements about getting him sent back to Egypt do not indicate, for

maltreatment and his mental illness. The letters from the petitioner's psychiatrists confirm that he suffered from depression and paranoid, irrational thinking towards the end of his marriage and that his mental illness was related to his marital difficulties. Their letters do not establish, however, that the petitioner's wife's behavior involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that he did not establish the requisite entry into the marriage in good faith and battery or extreme cruelty. Beyond the director's decision, the petitioner has also not established that he resided with his wife.⁴ He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.

example, that her threats were part of a pattern of coercive control or otherwise constituted psychological abuse.

⁴ A 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).