

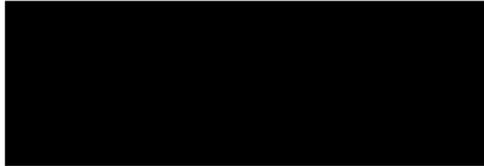
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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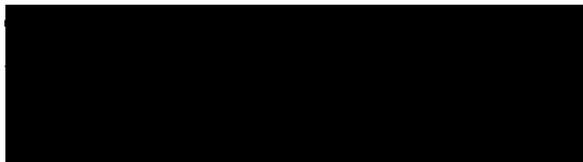


IN RE: Petitioner:



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, resided with her and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief.

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 Brazil who entered the United States on July 8, 2000, as a nonimmigrant visitor. The petitioner married a U.S. citizen on [REDACTED]. After U.S. Citizenship and Immigration Services (USCIS) denied the 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. On September 27, 2011, an immigration judge ordered the petitioner removed from the United States.

The petitioner filed the instant Form I-360 on April 19, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage, his shared marital residence 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 four-page brief reasserting the petitioner's eligibility.

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 fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Joint Residence

In his August 8, 2008 affidavit, the petitioner did not describe his and his wife's home or any of their shared residential routines in probative detail. The petitioner submitted copies of his federal income tax returns for 2005 and 2006 listing his address as a residence on [REDACTED] in [REDACTED] but the returns were marked "married filing separately." On the Form I-360, the petitioner stated that he lived with his wife from February 2005 to May 2006 at the [REDACTED] residence. However, as noted by the director, the petitioner stated on his Form G-325A, Biographic Information, which he signed on December 21, 2005, that he did not start residing at the [REDACTED] address until December 2005. In his affidavit, the petitioner also stated that after the marriage he kept his own apartment in [REDACTED] because it was closer to his workplace and it became his "personal sanctuary" from his troubled relationship with his wife.

The director notified the petitioner of these discrepancies in the RFE and requested the petitioner to submit additional evidence of his residence with his wife. In response, the petitioner submitted letters from three friends, only two of whom mentioned his marital residence. [REDACTED] briefly stated that she used to babysit the son of the petitioner's wife at the couple's home on [REDACTED] but she did not describe their shared residence in any probative detail. [REDACTED]

██████████ stated that he also resided at the ██████████ address when the petitioner was married, but that he rarely saw the couple because of his long working hours.

In response to the RFE and on appeal, the petitioner submitted no additional statement to explain the discrepancies in the record regarding his alleged joint residence with his wife. On appeal, counsel claims that the petitioner and his spouse “maintained two residences, but lived together at both residences.” The record does not support this assertion. The petitioner did not state the address of his wife’s residence nor describe that residence in any probative detail. In his affidavit, the petitioner stated that he maintained his own apartment in ██████████ throughout his marriage and that it became his “personal sanctuary.” The petitioner has submitted no supplemental evidence to resolve the inconsistency between his claim of a shared residence with his wife at the ██████████ address on the Form I-360 and his statements in his affidavit, which indicate that they did not live together at that location.

In his affidavit, the petitioner expressed his initial desire to “provide a stable home” for his wife and her son, but stated that after their marriage, he stayed with his wife at her unidentified residence for unspecified periods and that she once visited him at his Manomet Street home. Such visits do not meet the statutory requirement of joint marital residence. Section 101(a)(33) of the Act prescribes that, as used in the Act: “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.” 8 U.S.C. § 1101(a)(33) (2011). This definition represents a codification of the Supreme Court’s holding in *Savorgnan v. United States*,¹ in which the Court determined that, in contrast to domicile or permanent residence, intent is not material to establish actual residence, principal dwelling place, or place of abode. See H.R.Rep. No. 1365, 82d Cong., 2d Sess. 33 (1952). The preamble to the interim rule regarding the self-petitioning provisions cited section 101(a)(33) of the Act as the binding definition of “residence” and further clarified that “[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser’s home in the United States while continuing to maintain a general place of abode or principal dwelling place elsewhere.” 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996). The relevant evidence in this case does not establish that the petitioner ever maintained a principal, actual dwelling place with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below also fails to demonstrate that the petitioner entered into his marriage in good faith. In his affidavit, the petitioner briefly recounted how he met his wife, their mutual attraction, physical intimacy and their decision to marry after his wife became pregnant. The petitioner’s friends discussed the breakdown of his marriage, but provided no probative account of his intentions in entering the relationship. ██████████ stated that the petitioner married his wife against her advice, although “[e]verything seemed quite normal in the beginning.” ██████████ briefly recounted that as he became friends with the petitioner, “he filled [him] in on his marital status and seemed pretty happy,” but ██████████ indicated that he never met the petitioner’s wife and had no

¹ *Savorgnan v. United States*, 338 U.S. 491, 504-06 (1950).

personal knowledge of their relationship. ██████ stated, “they looked happy and in love and look[ed] like they would go the distance,” but ██████ also noted that he rarely saw the couple.

The petitioner’s tax returns list his wife, but were filed as “married filing separately” and the record contains no other joint documentation for the petitioner and his wife. In response to the RFE and on appeal, the petitioner submitted no further evidence or testimony to support his claim of entering his marriage in good faith. On appeal, counsel claims that the statements of the petitioner and his friends establish his good faith because they stated that the couple was “legitimately married” and the record contains no evidence that the petitioner entered the marriage in bad faith. Mere assertions of a valid marriage are insufficient to meet this requirement, however, and the statements of the petitioner and his friends lack the probative, detailed information necessary 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.

Battery or Extreme Cruelty

In his affidavit, the petitioner recounted that after their marriage, his wife began drinking alcohol excessively and reacted violently on one occasion when he disposed of her liquor. The petitioner explained that his wife became agitated and withdrawn when he continued to confiscate her alcohol for fear of her drinking while pregnant with their child. The petitioner believed that his wife then began using controlled substances when she repeatedly asked for money and her requests amounted to hundreds of dollars each week. She began leaving the house after receiving telephone calls late at night, neglected her infant son, became depressed, insulted him and threw objects at him. After once giving his wife nine hundred dollars in one week, the petitioner became suspicious that she was not using the money for her son or expenses related to her pregnancy. The petitioner recounted how he went to his wife’s home unannounced and she nervously told him to leave. Another man stepped into the doorway, told the petitioner to stop bothering “his girl” and physically assaulted the petitioner. The petitioner fled and later called his wife, but she told him to leave her alone and that she was no longer pregnant with their child. The petitioner later discovered that she had abandoned her apartment and he was unable to locate her. The petitioner’s statements indicate that he endured a troubled relationship with his wife due to her abuse of alcohol and drugs. His affidavit does not, however, establish that her behavior constituted battery or extreme cruelty.

The petitioner’s friends briefly discuss the breakdown of his marriage, but their statements are also insufficient to show that his wife subjected him to battery or extreme cruelty. ██████ stated that after the petitioner’s wife realized that he was not a wealthy man, she “became harsh with him; she was verbally and physically abusive. It was hard to watch.” However, ██████ does not describe any particular incident of abuse in detail. ██████ stated that the petitioner told him of his wife’s abusive behavior and that she and another man assaulted him, but ██████ did not indicate that he had any personal knowledge of the abuse. ██████ the petitioner’s roommate, stated only that he sometimes heard the petitioner and his wife arguing.

The petitioner submitted no additional affidavits or other relevant evidence on appeal. The statements of the petitioner and his friends do not establish that his wife subjected him to battery or extreme cruelty during their marriage, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi), and 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 reside with his wife during their marriage; that he did not enter their marriage in good faith; and that his wife did not subject him to battery or extreme cruelty during their marriage. 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.

ORDER: The appeal is dismissed.