

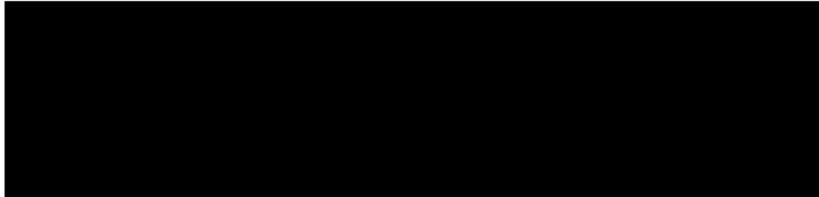
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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: **APR 24 2012**

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 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 a United States citizen.

The director determined that the petitioner had not established: he had jointly resided with the United States Citizen (USC) spouse; he had been subjected to battery or extreme cruelty perpetrated by the USC spouse; or he had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a brief, and documentation. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 citizen and native of Morocco. He initially entered the United States on September 27, 1986 on a J-1 visa. He married [REDACTED] the claimed abusive USC, on June 20, 2008. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on July 13, 2009. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established: he had jointly resided with the USC spouse; he had been subjected to battery or extreme cruelty by the USC spouse; or he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, a brief, additional documentation, and previously submitted documentation. Counsel asserts the director failed to fully consider the evidence submitted and that the petitioner has met his burden in establishing eligibility for this benefit.

Joint Residence

The petitioner states on the Form I-360 that he resided with his spouse from May 2008 until July 2008. The director set out the deficiencies in the evidence submitted regarding the couple's joint residence. The director specifically noted: the petitioner did not provide detailed testimony regarding the couple's claimed joint residence; the lease provided was dated subsequent to the date the petitioner claimed his spouse left him and the petitioner's explanation for the date was inconsistent with his initial statements; and the affiants who submitted testimony on his behalf did not provide probative detail of their observations of the claimed joint residence.

On appeal, counsel asserts that the petitioner's explanation for his spouse's signature on a lease dated after she left him is reasonable as a spouse's temporary return is not unusual for abusers. Counsel references an excerpt of an article from the Mayo Clinic in support of his assertion regarding abusers' promises to change their behavior. Counsel also submits letters from [REDACTED] who all declare that the petitioner and [REDACTED] lived together. The declarants do not provide further detail regarding the couple's joint residence. Counsel also submits the petitioner's phone records with the petitioner's spouse's

¹ Name withheld to protect the individual's identity.

alleged phone number highlighted. Counsel claims that the phone records show that the petitioner and [REDACTED] remained in touch subsequent to July 2008.

Upon review of the petitioner's statements, the statements submitted on his behalf, and the documentary evidence submitted, the petitioner has not provided probative testimony establishing that he jointly resided with his former spouse. The petitioner does not describe their home furnishings, their neighbors, any of the jointly-owned belongings, or any of their daily routines within the residence. In addition, although the petitioner explains that after his USC spouse left him in July 2008, she returned to sign a lease in October 2008 because she wanted to get back together, his explanation, as the director pointed out is inconsistent with his initial statement dated June 29, 2009. In the petitioner's June 29, 2009 statement he did not reference his spouse returning sometime prior to October 2008 to sign a lease but rather declared that he could not locate his spouse after she left even after he conducted a diligent search. The petitioner's phone records for a time period from March 2008 until August 2008 are not evidence that the petitioner and [REDACTED] resided together during their marriage and if the petitioner actually kept in touch with [REDACTED] subsequent to July 2008, such contact would further highlight the inconsistency in the petitioner's testimony. The affidavits of the petitioner's friends, although referencing that the couple lived together, do not provide detailed testimony regarding the joint residence of the couple. Upon review of the totality of the information in the record, the record does not include probative testimony or other evidence establishing the petitioner jointly resided with his spouse during their marriage.

Battery or Extreme Cruelty

In the petitioner's initial June 29, 2009 personal statement, he indicated that his spouse left him alone with the home obligations and that he had no idea of her criminal background. In response to the director's RFE, the petitioner added that he discovered that his wife used drugs and the couple argued about it and she started staying out late. He noted that she demanded money and when he refused her money she would throw things at him and call him names.

The director determined that the petitioner had not established he was a victim of battery or extreme cruelty and questioned whether the petitioner was the individual exerting control over his spouse rather than his spouse controlling him.

On appeal, counsel for the petitioner asserts that the petitioner was the victim of severe abuse as described in his affidavit. Counsel also submits a letter from [REDACTED] who declares that the petitioner's spouse had a drug problem. [REDACTED] in her statement on appeal declares she heard the petitioner's wife screaming and the petitioner used to tell her about his wife's physical abuse. [REDACTED] in his statement on appeal declares that when the couple was together they would argue and he recalls the petitioner's spouse screaming and that the petitioner used to tell him about his married life. In the statement of [REDACTED] on appeal she notes that she was aware of the petitioner's spouse's drug abuse and her physical abuse of the petitioner.

The petitioner does not claim in his statements any specific instances of battery. His statement that his spouse threw things at him is not sufficiently detailed to conclude that he was the victim of

battery or any physical abuse. Although [REDACTED] state the petitioner suffered physical abuse, they do not describe specific incidents or events that include physical abuse.

Similarly, the petitioner's claim that his spouse left him with the home obligations, was involved in drug abuse, and would call him names and throw things at him are not specifically detailed. His statements are insufficient to establish that his spouse's behavior constituted extreme cruelty under the statute, regulations, and case law. The petitioner has not provided specific detailed evidence of acts on the part of his spouse that are 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 [REDACTED] 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)).

Upon review of the statements submitted on his behalf on appeal, the declarants do not provide the requisite detail regarding the circumstances of any behavior that constitutes extreme cruelty as that term is defined in the statute, regulations, or case law. The declarants do not describe the circumstances or the detail of the screams they allegedly heard from the petitioner's wife. Their testimony is insufficient to conclude that the petitioner was subjected to extreme cruelty perpetrated by his USC spouse.

We find no error in the director's determination that the behavior of the petitioner's spouse did not constitute battery or extreme cruelty. The petitioner has not provided testimonial or other evidence on appeal sufficient to overcome the director's decision on this issue.

Good Faith Entry into Marriage

The petitioner, in his statement in response to the director's RFE, indicated that he met his spouse when she worked at a restaurant he frequented. He noted that they started dating in March 2008, moved in together, and decided to get married. The director set out the deficiencies in the petitioner's statement and the statements of [REDACTED] submitted on his behalf, as well as the documentary evidence submitted. The statements of [REDACTED] submitted on appeal do not provide detailed observations of the petitioner's conduct prior to marriage or during the marriage sufficient to provide insight into the petitioner's intent when entering into the marriage.

Upon review of the petitioner's statements, he has not provided a probative account of his courtship, his decision to marry, the couple's shared residence(s) or shared experiences. The petitioner's testimony lacks the requisite detail that would assist in ascertaining his intentions when entering into the marriage. The statements of the petitioner's friends do not include probative detail of their observations of the interactions of the couple and thus are also insufficient evidence of the

petitioner's intent when entering into the marriage. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to establish that he jointly resided with the claimed abusive spouse, that he was subjected to battery or extreme cruelty by his spouse, or that he entered into the marriage in good faith. 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.