

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:

DEC 17 2012

Office: VERMONT SERVICE CENTER



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:

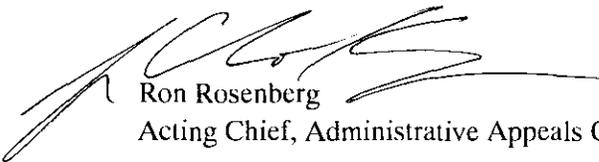


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting 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 on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage and that he entered into their marriage in good faith. On appeal, the petitioner submits 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:

(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.

* * *

(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 Trinidad and Tobago who entered the United States as a visitor on June 15, 2001. He married A-A-¹, a U.S. citizen, on May 20, 2008 in Fairfax City, Virginia. The petitioner filed the instant Form I-360 on March 31, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty and entry into marriage with A-A- in good faith. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

On appeal, the petitioner submits an addendum to the originally submitted psychiatric evaluation letter dated August 18, 2011, and two personal statements.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

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. The petitioner did not file evidence regarding battery or extreme cruelty with his original submission. In response to the RFE, the petitioner submitted a personal statement, a psychological evaluation prepared by [REDACTED], a New York State licensed psychotherapist, and affidavits from three friends.

In his first affidavit submitted below, the petitioner stated that A-A-'s attitude towards him began to change sometime in September of 2009. He stated that she yelled at him and became very aggressive towards him. He stated that she would find fault with how he did his household chores and would threaten to have him deported. In his second affidavit submitted on appeal, the petitioner recounts finding out that A-A- was having an affair. He stated that she became angry and kicked him out of the car, forcing him to walk home. He does not describe this incident further nor does he provide probative details regarding other specific incidents of the alleged abuse. The petitioner's statements do not demonstrate 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 director correctly determined that the psychological evaluation letter from [REDACTED] LCAT does not provide any additional evidence regarding the claimed abuse. [REDACTED] indicated that A-A-'s urge to control all aspects of her relationship with the petitioner resulted in a "dramatic decline of [the petitioner's] emotional health and quality of life." The addendum submitted on appeal quotes what the petitioner stated during the session but does not provide probative details

¹ Name withheld to protect the individual's identity.

regarding any abuse or extreme cruelty inflicted by A-A- upon the petitioner. While we do not question [REDACTED] professional expertise, her assessment of the abuse is based on her interview of the petitioner, and it provides no further, substantive information regarding the claimed abuse.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, “evidence of abuse may include... other forms of credible relevant evidence.” 8 C.F.R. § 204.2(c)(2)(iv). In response to the RFE, the petitioner submitted affidavits from friends [REDACTED]. [REDACTED] stated that A-A- became verbally abusive and he noticed that this behavior continued on for a number of months. However, he did not describe the basis for this observation or recount whether he witnessed any specific incidents of abuse. [REDACTED] stated that when she would call the petitioner, she would hear A-A- in the background, threatening to kick the petitioner out of the house. She does not provide further, probative details regarding specific incidents of abuse. [REDACTED] described hearing A-A- be abusive during his telephone conversations with the petitioner but also does not describe any incidents of abuse in probative detail. The director was correct in finding these affidavits insufficient to demonstrate the petitioner’s battery or extreme cruelty at the hands of A-A-.

On appeal, the petitioner’s evidence is insufficient to demonstrate that any specific behaviors of the petitioner’s wife constituted battery or extreme cruelty. When viewed in the aggregate, the remaining, relevant evidence in the record is insufficient to establish that A-A- battered the petitioner or that her behavior 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.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to establish that he married A-A- in good faith. The record contains the petitioner’s affidavits, copies of joint bank statements, a copy of his and his wife’s joint car title, a copy of their 2009 federal income tax return transcript showing their filing status as married filing jointly, photographs of their wedding day and of one other occasion, and affidavits from three friends. In his first affidavit, the petitioner stated that he married A-A- on May 20, 2008 and left when she became abusive. He stated that his marriage to A-A- was a life changing event and that they carried out their “daily lives like a happily married couple.” The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the abuse. The affidavits of the petitioner’s friends submitted below also did not contain probative information regarding the petitioner’s intentions in marrying A-A-. The petitioner’s friends all attested to knowing the petitioner and his wife as a married couple, but they did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner’s entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit “testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship.

All credible relevant evidence will be considered.” See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner’s statements on appeal do not provide sufficient detail to adequately address his good faith intent upon marrying A-A-. Although he describes how they met, the petitioner’s testimony is insufficient to establish his intentions upon marrying A-A-. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner 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; *Matter of Chawathe*, 25 I&N Dec. 369 (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.