



U.S. Citizenship
and Immigration
Services



B9

Date:

Office: VERMONT SERVICE CENTER

FILE:



DEC 20 2012

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:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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 Director, Vermont Service Center, (“the director”) denied the immigrant visa petition. The AAO dismissed a subsequent appeal. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion will be granted and the previous decision of the AAO will be affirmed.

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 his United States citizen spouse.

The director denied the petition for failure to establish the requisite good-faith entry into the marriage. The AAO affirmed the director’s decision and dismissed a subsequent appeal. On motion, the petitioner reasserts his eligibility and submits additional evidence.

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, 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 (ii) 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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

* * *

(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 nonimmigrant visitor in 2000. On December 21, 2005, the petitioner married a U.S. citizen in New Jersey. The petitioner filed the instant Form I-360 petition on April 6, 2009. The director subsequently issued a request for additional evidence (RFE) that the petitioner was subjected to abuse. The director issued another RFE that the petitioner had the requisite joint residence, abuse, and good-faith marriage. The petitioner submitted additional evidence. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite good-faith entry into the marriage and the petitioner timely appealed. The AAO dismissed the appeal.¹ The petitioner has now filed a motion to reopen with the AAO, which satisfies the requirements and will be granted.

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. The decision to dismiss the appeal will be affirmed for the following reasons.

Good Faith Entry into Marriage

In its July 12, 2011 decision, the AAO determined that the record failed to establish that the petitioner entered into marriage with his wife in good faith. In reaching this determination, the AAO found an inconsistency in the joint residential address the petitioner listed on his Form I-360 and other documentation in the record. The AAO also found that the documentary evidence of shared residence and finances submitted by the petitioner below and on appeal were issued subsequent to the petitioner's separation from his spouse. The AAO stated that the petitioner failed to provide probative details regarding his initial meeting with his spouse, their courtship, their discussions of marriage, their plans to marry, and their interactions subsequent to the marriage except as they related to the claims of abuse. The AAO similarly stated that a letter from the petitioner's friend, [REDACTED] only very briefly in a one-sentence statement discussed the petitioner's marriage,

¹ The petitioner later filed an appeal of the AAO's July 12, 2011 decision, which was rejected for lack of jurisdiction on February 28, 2012.

and therefore lacked probative details. The AAO concluded that the record did not include sufficient probative evidence establishing 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.

On motion, the petitioner asserts in two nearly identical statements, dated July 21, 2011 and March 16, 2012, that he previously submitted documents with addresses that differ from the marital residence he listed on his Form I-360 because he was frequently thrown out of his marital residence. He further asserts that the reason he submitted documents that were issued after his separation from his wife is because her name remained on their joint accounts after their separation. The petitioner states that he was in love with his wife and thought that she was his soul mate. However, the petitioner does not further describe how he met his wife, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse. The petitioner submits letters from [REDACTED] and [REDACTED] and [REDACTED] who briefly discuss the petitioner's marriage, but focus predominately on the 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.

Conclusion

On motion, the petitioner has failed to establish that he entered into marriage with his wife in good faith. 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.

ORDER: The AAO's decision, dated July 12, 2011, is affirmed. The appeal remains dismissed. The petition remains denied.