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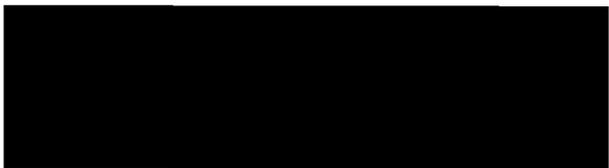
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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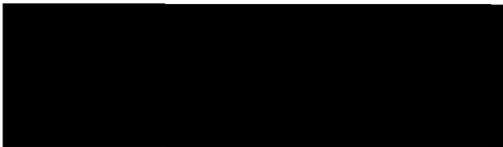


IN RE: FEB 07 2012
Petitioner:



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:

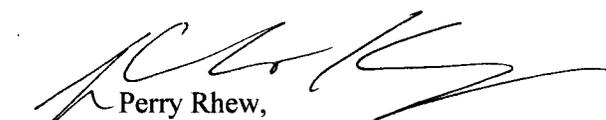


INSTRUCTIONS:

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 service center director (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director’s decision will be withdrawn in part and affirmed in part. 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: (1) that his wife subjected him to battery or extreme cruelty during their marriage; and (2) that he is a person of good moral character. On appeal, counsel submits a brief and additional evidence.

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act

* * *

(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.

- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

- (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 standard and 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.

* * *

- (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.

- (v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

- (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.

Section 204(c) of the Act, 8 U.S.C. § 1145(c) states, in pertinent part, the following:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or
- (2) the [Secretary of Homeland Security] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, located at 8 C.F.R. § 204.2(a)(1)(ii), states the following:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

Pertinent Facts and Procedural History

The petitioner, a citizen of Peru, married Y-A-,¹ a citizen of the United States, on December 28, 2000. He filed the instant Form I-360 on April 20, 2010. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to his RFE, the director denied the petition on April 5, 2011.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has established his requisite good moral character and has therefore overcome that portion of the director's decision. However, he has not established that Y-A- subjected him to battery or extreme cruelty during their

¹ Name withheld to protect individual's identity.

marriage. Beyond the decision of the director, three additional grounds of ineligibility exist: the petitioner has also failed to establish that he married Y-A- in good faith: section 204(c) of the Act bars approval of the petition; and the petitioner is consequently ineligible for immediate relative classification based upon his marriage to Y-A-.

Battery or Extreme Cruelty

The petitioner claimed in his February 8, 2010 declaration that Y-A- demeaned him; threatened to withdraw her sponsorship of his immigration petition unless he paid her; withdrew money from their joint bank account without his knowledge or permission; and made a false claim of domestic violence. He also recounted hearing rumors she was having an affair. However, the petitioner did not explain any specific instances of abuse in detail.

stated in her November 8, 2010 letter that Y-A- was overprotective and always wanted to know the petitioner's whereabouts. In his November 11, 2010 letter, claimed that Y-A- was jealous. These two letters are general and lack detailed accounts of specific instances of such behavior. Furthermore, the petitioner did not himself claim that Y-A- was jealous or controlling.

On appeal, counsel asserts that Y-A-'s behavior satisfies the definition of battery or extreme cruelty contained at 8 C.F.R. § 204.2(c)(1)(vi) and that the director "severely minimized" the mental suffering experienced by the petitioner. We find no error in the director's assessment of the relevant evidence and the petitioner submits no additional evidence on appeal.

Viewed in the aggregate, the relevant evidence does not establish that Y-A- subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner does not allege, and the record does not establish, that Y-A- subjected him to battery. Nor does it establish that Y-A- subjected the petitioner to extreme cruelty during their marriage. To qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the non-physical cruelty be extreme. 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)). The relevant evidence is insufficient to establish that Y-A-'s behavior involved threatened violence, psychological abuse or exploitation, was part of an overall pattern of violence, or otherwise constituted extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Good Moral Character

Primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. 8 C.F.R. § 204.2(c)(2)(v). The record in this case establishes that the petitioner lived in the during the entirety of this three-year period, which began in April 2007 and ended in April 2010.

As the record lacked local police clearances or a state-issued criminal background check, the director found that the petitioner had failed to demonstrate his requisite good moral character. On appeal, the petitioner submits a state-issued criminal background check from the California Department of Justice, Bureau of Criminal Information and Analysis, which states that the petitioner has no arrest record in that state.

Accordingly, the record now establishes the petitioner's requisite good moral character and this portion of the director's decision is hereby withdrawn.

Good Faith Entry into Marriage

Beyond the decision of the director, the relevant evidence does not establish that the petitioner married Y-A- in good faith. In a sworn, written statement executed on January 22, 2003, the petitioner admitted that he married Y-A- "with the intention to get permanent residency. We have never lived together as husband and wife." The regulation at 8 C.F.R. § 204.2(c)(1)(ix) prohibits approval of a self-petition if the petitioner entered into the marriage for the purpose of circumventing the immigration laws.

Consequently, the record does not establish that the petitioner married Y-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(c) of the Act and Corresponding Ineligibility for Immediate Relative Classification

Beyond the decision of the director, section 204(c) of the Act further bars approval of this petition. A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). U.S. Citizenship and Immigration Services (USCIS) may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975). The petitioner's testimony regarding his marriage lacks probative details regarding the couple's courtship, wedding ceremony, shared residence, and experiences together. Although the record contains joint documents and letters from individuals who knew the petitioner and his wife, that evidence is outweighed by the petitioner's 2003 sworn statement that he married Y-A- in order to obtain permanent residency in the United States.

An independent review of the entire record shows that section 204(c) of the Act bars approval of this petition, as the record contains substantial and probative evidence that the petitioner entered into marriage with Y-A- for the purpose of evading the immigration laws of the United States. Because the petitioner has not complied with section 204(c) of the Act, he is also ineligible for immediate relative classification based upon his marriage to Y-A- and is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for that additional reason. 8 C.F.R. § 204.2(c)(1)(iv).

Conclusion

The petitioner has overcome the director's determination that he did not establish his requisite good moral character. However, he failed to establish that Y-A- subjected him to battery or extreme cruelty during their marriage. Beyond the decision of the director: (1) the petitioner failed to demonstrate that he married Y-A- in good faith; (2) section 204(c) of the Act bars approval of this petition; and (3) the petitioner is consequently ineligible for immediate relative classification based upon his marriage to Y-A-.² Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

² An application or 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); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).