

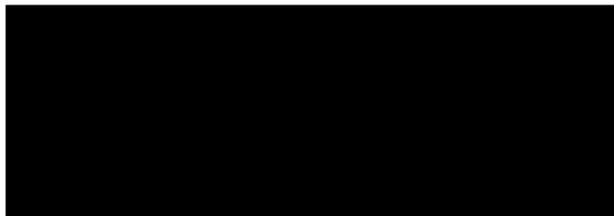
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

DATE: **FEB 28 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. 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 native of Afghanistan who entered the United States on February 16, 2007 on a K-1 fiancé visa. He married [REDACTED] the claimed abusive United States citizen, on [REDACTED]. The record includes a judgment dissolving the marriage that was filed on September 10, 2008 in the Los Angeles Superior Court. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on January 21, 2009. As the initial record was insufficient to establish the petitioner's eligibility, the director issued two requests for evidence (RFE). Upon review of the totality of the record, including the petitioner's responses to the RFEs, 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, Notice of Appeal or Motion, and a brief. Counsel asserts the director failed to read or misread the petitioner's statements, misrepresented the petitioner's statements and claimed the petitioner was inconsistent in his statements, and did not consider the affidavits submitted from third parties on the petitioner's behalf.

Joint Residence

The petitioner states on the Form I-360 that he resided with his spouse from February 2007 until July 2007. In an undated statement appended to the petition, the petitioner indicated that after he married [REDACTED], the couple moved into a room in her mother's house in Fontana, California and that the couple lived there with his former spouse's mother, her sister and her sister's son. In response to the director's RFEs, the petitioner indicated that he did not have documents to establish joint residency as he lived in the home of his ex-mother-in-law. The director determined that the petitioner had not submitted probative evidence of his joint residence with the USC spouse. Counsel does not address this issue on appeal.

Upon review of the petitioner's statements, the statements submitted on his behalf, and the totality of the record, 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. Upon review of the totality of the information in the record, the record does not include probative

¹ Name withheld to protect the individual's identity.

testimony establishing the petitioner jointly resided with his former spouse during their marriage.

Battery or Extreme Cruelty

In the petitioner's initial undated personal statement, he declared that two weeks after the marriage his former spouse began to nag and complain that he was useless, insisted that he find work even though he did not have work permit, and asked him to participate in insurance fraud by burning down the house or burning the car. The petitioner stated that his former spouse would act out physically and when she was upset or angry would regularly push him, shove him, slap him, throw plates and dishes, and act hysterically. The petitioner also provided other consistent information regarding specific incidents of battery perpetrated by [REDACTED] on one or more occasions.

The petitioner also provided two statements signed by [REDACTED] stated that he knew the petitioner and had met his wife and noticed that she was confrontational and used inappropriate language. [REDACTED] also stated that he knew the petitioner had difficulties with his wife and they had arguments all the time. In a statement signed by [REDACTED] declared that the petitioner and his former spouse had many quarrels and misunderstandings throughout their marriage.

The director noted specific discrepancies in the petitioner's testimony. Based on the discrepancies, the director questioned the validity of the petitioner's allegations and credibility. The director also determined that the statements submitted on the petitioner's behalf did not include probative detail and thus were insufficient to establish that the petitioner had been subjected to battery or extreme cruelty.

On appeal, counsel for the petitioner asserts that the petitioner has provided substantive evidence from third parties to support his petition and that the director has ignored the petitioner's statements and instead focused on a few discrepancies and concluded that the petitioner was not credible.

Upon review of the totality of the evidence in the record, the petitioner has established that he was subjected to battery perpetrated by his former spouse. Thus, the petitioner has established this specific element of eligibility for the I-360 benefit. The director's decision to the contrary is withdrawn.

Good Faith Entry into Marriage

In the petitioner's initial statement appended to the petition, the petitioner stated that according to his family's strict views on moral issues he did not live with his fiancé or spend time alone with her prior to marriage and thus did not know her really well. The petitioner explained that his former spouse is his second cousin and that in September 2005 he learned she was in London and arranged for them to meet and decided to become engaged. In an undated personal statement in response to the director's RFE, the petitioner declared that when the couple met in London they fell in love with each other and he made plans to have a big family together and thought she felt the same. The petitioner stated that he married his former spouse in good faith. In a third personal statement, the petitioner indicated that he fled to England from Afghanistan in December 2001 and while in

England met his former spouse for two days and fell in love. The petitioner stated that his former spouse left England and the couple continued a long distance relationship.

The statements submitted by [REDACTED] do not include probative detail of their observations of the interactions of the couple and thus are insufficient evidence of the petitioner's intent when entering into the marriage.

The director noted the brief, general information supplied by the petitioner regarding his introduction to his former spouse and the insufficiency of the statements of the individuals who provided testimony on the petitioner's behalf. The director concluded that the record lacked probative testimony establishing the petitioner's intent when entering into the marriage.

The petitioner has not provided further information regarding his intent when entering into the marriage on appeal. Counsel does not address this issue on appeal. Upon review, the record does not include probative testimony regarding the petitioner's initial relationship with his former spouse, the courtship, the decision to marry, and their shared experiences except as it relates to his claim of abuse. The petitioner's testimony lacks probative detail that provides insight into his intentions when entering into the marriage. General statements are insufficient to establish intent in this regard. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has not established that he jointly resided with the claimed abusive 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.