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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

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**U.S. Citizenship
and Immigration
Services**



Bq

Date: **JAN 26 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:

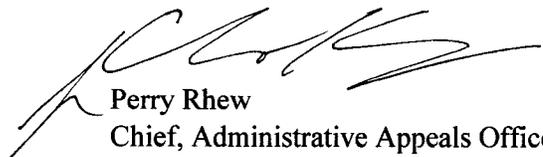
SELF-REPRESENTED

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 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 the \$630 fee. 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, (“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 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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith, they resided together, and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a statement.

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:

(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 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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Nepal who was admitted to the United States on February 9, 2004, as an F-1 student. The petitioner married a U.S. citizen, V-F-, on December 10, 2008 in Dallas, Texas. The petitioner filed the instant Form I-360 on July 7, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage, residence with his wife, and his wife's battery or extreme cruelty. 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.

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 petitioner's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his first statement, dated July 2, 2010, the petitioner did not discuss his good faith entry into his marriage. He merely stated that he entered the United States on February 9, 2004 and married [REDACTED] on December 11, 2008 in Texas. In response to the RFE, the petitioner submitted another declaration, dated February 14, 2011, in which he stated, "[a]fter our marriage couple of months was fine she was [sic] seems ok and I had manage her [sic] all of the demands." The petitioner did not describe how he met his wife, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

On appeal, the petitioner does not address his good faith entry into the marriage. He only states that he and [REDACTED] wed in Dallas, Texas on December 11, 2008 and they were separated after almost a year of marriage. The petitioner has submitted no other evidence of good faith marriage with [REDACTED]. 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.

Joint Residence

On the Form I-360, the petitioner stated that he lived with his wife from December 2008 until November 2009 in Granbury, Texas. In the statement he submitted in response to the RFE, the petitioner asserted that all of his pictures and "other related documents" were destroyed when he left [REDACTED]. On appeal, the petitioner asserts that all of his wedding pictures and other documents were left with [REDACTED] and he never received the documents back. Regardless of whether the documentation showing joint residence was destroyed or never returned to him, the petitioner has not provided probative testimony of his shared residence with [REDACTED]. In his statements, the petitioner does not describe his marital home or shared residential routines in any detail, apart from the alleged abuse. The

petitioner has not provided any other evidence of his joint residence, such as letters from friends who may have visited him. Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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. In his first statement, the petitioner recalled that ██████ "became abusive with [him] so many times." He stated that she was always fighting with him and became angry if he did not agree with her. In the statement submitted in response to the RFE, the petitioner recalled that from August to October 2009, ██████ was fighting with him on a daily basis and treating him badly. He recounted that she threw away food that he made, sexually harassed him, had bad spending habits, demanded money, threatened to beat him, and would spend time with a boyfriend. The petitioner's statements are brief and do not provide any probative information regarding any specific incident of abuse.

On appeal, the petitioner briefly asserts that in October 2009, ██████ tried to sexually harass him. He contends that ██████ also used "painful words" before their separation. The petitioner's appeal statement does not provide any additional information to support his claim. The petitioner has submitted no other evidence of the alleged abuse. 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.

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that he did not establish that he entered into the marriage in good faith, resided with his wife, and that she subjected him to battery or extreme cruelty during the marriage. 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 appeal is dismissed.