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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: **JUL 17 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 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. 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,

Terry 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 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 he married his wife in good faith. On appeal, counsel submits a memorandum of law 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:

- (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.

* * *

- (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, a citizen of Colombia, claims to have entered the United States on September 8, 2003. He married C-B-¹, a citizen of the United States, on January 6, 2006. The petitioner filed the instant Form I-360 on August 13, 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 November 30, 2011.

The AAO conducts appellate review 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 failed to overcome the director's ground for denying this petition.

Good Faith Marriage

The relevant testimonial evidence submitted below does not establish that the petitioner married C-B- in good faith. Although the petitioner briefly described his courtship with C-B- in his August 5, 2010 letter submitted below, discrepancies contained in the documentary evidence he submitted regarding his alleged good faith entry into the marriage call into question the reliability of his testimony regarding his intentions upon entering into marriage with C-B-. For example, the petitioner submitted documentation regarding shared Citibank accounts when he filed the petition. The director noted the relatively low level of activity on this account in his RFE and, in response, the petitioner submitted additional documentation regarding the account. In his July 23, 2011 letter submitted in response to the RFE the petitioner claimed that C-B- controlled their finances, and that although they were now separated he nonetheless feared removing her name from their accounts. However, the additional documentation submitted by the petitioner in support of this claim undermines it. Instead of demonstrating that the petitioner and C-B- were sharing a savings

¹ Name withheld to protect individual's identity.

account, the documentation shows that the petitioner was the owner of the account, and that he held in "in trust for" her. This type of bank account is known colloquially as a "Totten trust account" and, as trustee of the account, the petitioner was the only individual legally able to access it. C-B- was unable to access this account on her own. If C-B- was controlling of the couple's finances, it is not clear why she consented to such this financial arrangement.

Also, the petitioner submitted what he claimed was a copy of the couple's 2006 joint income tax return when he filed the petition. It indicates that on February 17, 2006, the date on which the tax return was purportedly filed, C-B- and the petitioner were living together in an apartment located on 70th Street in Guttenberg, New Jersey. On the Form G-325A, Biographic Information he signed on March 17, 2006, the petitioner claimed that he moved to the 70th Street address in Guttenberg in February 2006, and he claimed on the Form I-360 that he and C-B- lived together at that address until April 2008. When the director noted that the record lacked proof this tax return had actually been filed with the Internal Revenue Service (IRS), the petitioner submitted an electronic printout of the couple's 2006 tax return that he obtained from IRS website in response. However, the IRS printout indicates that it was filed from an address located on [REDACTED] in Elizabeth, New Jersey rather than from the [REDACTED] Guttenberg as indicated on the first tax return submitted by the petitioner. It consequently appears as though the document that the petitioner represented to be the couple's 2006 tax return filed from their shared 70th Street address in Guttenberg was in fact not filed with the IRS, and that the petitioner submitted it to U.S. Citizenship and Immigration Services (USCIS) in order to create the illusion that he was living with C-B- at the 70th Street address in Guttenberg as claimed in their other joint paperwork. This detracts further from the credibility of the petitioner's testimony regarding his alleged good-faith entry into the marriage and diminishes its probative value.

Nor did the remaining testimonial evidence submitted below, which included letters from [REDACTED] and [REDACTED] establish that the petitioner married C-B- in good faith. These letters dealt primarily with the abuse to which C-B- allegedly subjected the petitioner, and they did not contain probative descriptions of the couple's courtship, wedding ceremony, or any of their shared residence and experiences, apart from the alleged abuse.

The documentary evidence submitted below did not establish that the petitioner married C-B- in good faith, either. The evidentiary deficiencies surrounding the documentation relating to the couple's tax returns and bank accounts were discussed above. The life insurance policy purchased by C-B- naming the petitioner as her beneficiary speaks to her intentions rather than to those of the petitioner. The pictures of the couple together establish only that the petitioner and C-B- were together on several occasions and do not demonstrate his good-faith entry into the marriage. Finally, while relevant, the correspondence from the New Jersey Motor Vehicles Commission, the IRS, and Sprint do not, alone, establish that the petitioner married C-B- in good faith.

On appeal, counsel argues that the director erred in denying the petition and submits another letter from the petitioner in which he describes his feelings toward C-B- at the outset of their relationship. However, as discussed above, the petitioner's testimony regarding his alleged good-faith entry into marriage with C-B- is of little probative value.

Nor do the assertions made by counsel in her December 28, 2011 memorandum of law establish that the petitioner married C-B- in good faith. Her assertion that the director was required to issue a notice of intent to deny (NOID) the petition prior to denying it is incorrect. Although 8 C.F.R. § 204.2(c)(3)(ii) previously required the director to issue a NOID prior to denying a self-petition, that requirement was eliminated effective June 18, 2007.² The policy memorandum counsel cites in support of her argument was issued on February 16, 2005³ and cites to 8 C.F.R. § 204.2(c)(3)(ii) as it existed on that date.

Counsel also questions whether the director properly applied the correct standard of proof. We agree with counsel in part, and withdraw that portion of the director's decision in which he indicated documentary evidence is required to establish the petitioner's claim. The regulations do not require a self-petitioner to submit primary, corroborative evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). However, while section 204(a)(1)(J) of the Act and 8 C.F.R. § 204.2(c)(2)(i) require USCIS to consider any credible evidence relevant to the petition, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for establishing the petitioner's claim list examples of the types of documents that may be submitted and reiterates, "All forms of relevant credible evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). However, in this case, as in all visa petition 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). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily satisfy the petitioner's burden of proof. As discussed above, in this case it did not.

We acknowledge counsel's assertions regarding the petitioner's inability to locate the types of documentary evidence often submitted in support of an alien's good faith entry into marriage. However, such a scenario makes the alien's testimony even more important and, as forth above, given the questions raised above regarding its reliability the petitioner's testimony regarding his allegedly good-faith entry into marriage with C-B- is of little probative value. For this same reason, the petitioner's December 26, 2011 letter submitted on appeal does not establish the petitioner's claim.

The petitioner's testimony is of little probative value, and the remaining testimonial evidence does not establish his good-faith entry into the marriage. Nor does the relevant documentary evidence establish that the petitioner married C-B- in good faith. Accordingly, the relevant evidence, when considered in the aggregate, does not establish that the petitioner married C-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

² See 72 Fed. Reg. 19100 (Apr. 17, 2007).

³ See Memorandum from William R. Yates, Associate Director, Operations, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)* (Feb. 16, 2005).

Conclusion

The petitioner has failed to overcome the director's grounds for denial and has not established that he married C-B- in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and this petition must remain denied.

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). He has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.