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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

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DATE: **MAR 09 2012** OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

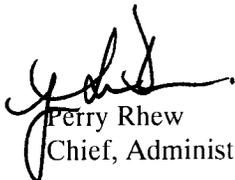
ON BEHALF OF PETITIONER:

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 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 failed to establish: (1) that he resided with his wife; (2) that his wife subjected him to battery or extreme cruelty during their marriage; and (3) that he married her in good faith. On appeal, the petitioner through 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:

- (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 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.

* * *

- (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 Jordan who entered the United States on August 31, 2004. He married G-I,¹ a citizen of the United States, on August 25, 2007. The petitioner filed the instant Form I-360 on June 14, 2010. The director issued a subsequent request for additional evidence (RFE) and the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on June 2, 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 failed to overcome the director's grounds for denying this petition.

Joint Residence

The petitioner did not describe his allegedly joint residence with G-I in probative detail in any of the two statements he submitted below. Although he stated in his May 25, 2010 letter that they shared a large house with a large living room and three bedrooms, he provided no further details. Although the petitioner submits another letter on appeal, it contains no meaningful information regarding the allegedly joint residence.

The relevant documentary evidence does not establish that the petitioner and G-I resided together. The petitioner stated on the Form I-360 that he and G-I lived together from August 2007 until March 2010. However, most of the relevant documentary evidence indicating that the couple lived together, including most of the utility bills, bank statements, and rent receipts, as well as the residential lease agreement and the car insurance policy, was issued near the time of the beneficiary's September 2008 immigration interview and is therefore of limited probative value. The utility bills dated March 26 and July 2, 2010 were issued after the couple ceased living together. Although the other rent receipts, the tax returns, and the Capitol One statement from 2009

¹ Name withheld to protect individual's identity.

display a shared address for G-I- and the petitioner, this evidence alone does not establish the couple's allegedly joint residence.

Finally, a significant portion of counsel's appellate brief consists of a rebuttal to the director's finding that the petitioner's evidence regarding the couple's allegedly joint residence is inconsistent. In his decision denying the petition the director found inconsistencies in the petitioner's evidence regarding the second address the couple allegedly shared, which was located [REDACTED] in Shreveport, Louisiana. The director also characterized the petitioner's use of his employment address on his tax returns as an additional inconsistency. We withdraw the director's findings with regard to the first set of alleged inconsistencies, as our review finds no discrepancies. With regard to the second set of inconsistencies, counsel asserts on appeal that the petitioner used his employer's address on his tax returns because he worked very long hours at the store on a daily basis and thus opted to have his important mail delivered to him there. Even if that is so, the documents listing the couple's address as his work address, at which he acknowledges the couple never lived, are not evidence of the requisite joint residence.

Considered in the aggregate, the relevant evidence fails to establish that the petitioner and G-I- shared a joint residence. The relevant testimonial evidence lacks detailed, probative information regarding the allegedly joint residence, and the specific deficiencies regarding the relevant documentary evidence were discussed above. The petitioner has failed to establish that he resided with G-I-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The petitioner's claims regarding his abuse by G-I- were made in the three letters submitted below and on appeal, and consisted of infidelity, name-calling, threats, and theft of his belongings. He also alleges threats and other malfeasance committed by G-I-'s boyfriend. The record also contains letters from [REDACTED] and [REDACTED] who made similar allegations. Finally, the record contains an undated and unsigned letter from [REDACTED] who diagnosed the petitioner with "depression with anxiety component," and stated that he referred the petitioner to a psychiatrist for further evaluation and the possible prescription of antidepressant medication.

The relevant evidence does not establish that G-I- subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner does not allege, and the record does not establish, that G-I- battered him during their marriage. The relevant evidence does not establish that G-I-'s behavior constituted extreme cruelty, either. The claims of abuse by the petitioner and his affiants center primarily around G-I-'s infidelity, but infidelity is not comparable to any of the types of activities listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty. Although the petitioner makes other allegations of abuse, such as G-I- selling his belongings while he was at a hearing in immigration court, he does not describe any specific incidents of abuse in probative detail. Finally, the petitioner's statement that G-I-'s boyfriend threatened him does not establish his claim either, as he has not provided the probative details of these threats or established that they were willfully condoned or incited by G-I-

On appeal, counsel argues that the director did not assign [REDACTED] letter sufficient evidentiary weight. In his decision denying the petition, the director stated that [REDACTED] letter was general and lacked detail, and noted that it was unsigned. We agree with the director's analysis. While we do not question [REDACTED] he did not describe any specific incidents of abuse in probative detail in this letter. Furthermore, because the letter was not dated, is not clear to whom [REDACTED] was referring when he spoke of the petitioner's "previous wife." Furthermore, it is not clear whether the petitioner accepted [REDACTED] referral to a psychiatrist and, if so, what the psychiatrist said and whether any antidepressant medication was prescribed. Finally, we agree with the director's determination that the lack of a signature diminishes the letter's probative value. For all of these reasons, the letter from [REDACTED] does not establish that G-I's conduct was comparable to any of the types of activities listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty. *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)).

Considered in the aggregate, the relevant evidence fails to establish that G-I- subjected the petitioner to battery or extreme cruelty during their marriage as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Marriage

The relevant evidence does not establish that the petitioner married G-I- in good faith. In his letters submitted below and on appeal the petitioner stated that he and G-I- met at a restaurant and began dating one another, that they spent every day together and fell in love, and married eight months later. However, he did not describe their courtship, wedding ceremony, and shared residence and experiences, apart from the alleged abuse, in probative detail. The testimony from [REDACTED] and [REDACTED] contains the same deficiencies, as it lacks detailed, probative information regarding the couple's relationship sufficient to establish the petitioner's intentions upon marrying G-I-.

The evidentiary deficiencies contained in the relevant documentary evidence were discussed above. Again, most of the utility bills, bank statements, and rent receipts, as well as the residential lease agreement and the car insurance policy, were issued near the time of the beneficiary's September 2008 immigration interview and are therefore of little probative value. There is no evidence that both the petitioner and G-I- had access to, and used, the [REDACTED] account, and the utility bills dated March 26 and July 2, 2010 were issued after the couple ceased living together. While relevant, the remaining rent receipts and the jointly-filed tax returns do not, alone, establish the petitioner's good faith entry into the marriage.

On appeal, counsel lists the evidence submitted by the petitioner but does not address or otherwise overcome the lack of probative details regarding the couple's relationship in the relevant testimonial evidence or the evidentiary deficiencies discussed above contained in the relevant documentary evidence.

Considered in the aggregate, the relevant evidence does not establish that the petitioner married G-I- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to overcome the director's grounds for denial and has not established that he resided with G-I-; that she subjected him to battery or extreme cruelty during their marriage; or that he married her 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.