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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: **MAY 09 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 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, the petitioner submits a Form I-290B, Notice of Appeal or Motion, and additional documentation. 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 citizen and native of India who entered the United States on September 20, 2009 on a K-1 fiancé visa. He married M-B-¹, the claimed abusive USC, on October 24, 2009. On July 26, 2010, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, 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. The petitioner timely submits a Form I-290B, a statement from [REDACTED] a copy of M-B-'s petition for dissolution of the marriage filed on June 7, 2010, and video clips of the engagement and wedding ceremonies and wedding reception.

Joint Residence

The petitioner states on the Form I-360 that he resided with his USC spouse from October 2009 until January 2010. The director discussed the deficiencies in the petitioner's previously submitted statements. On appeal, the petitioner submits an affidavit signed by [REDACTED] on August 29, 2011. [REDACTED] declares that the petitioner stayed with him until his marriage on October 24, 2009 at which time the petitioner stayed in his spouse's parent's house for about three months. He notes that he met the petitioner three or four times at the petitioner's in-laws' house. The petitioner notes on the Form I-290B that the petition for the dissolution of the marriage filed by M-B- indicates the couple's marriage took place on October 25, 2009 and that the couple separated on January 20, 2010.

Upon review of the record, the petitioner has provided limited testimony regarding his claim of joint residence with M-B-. The petitioner does not describe the couple's home furnishings, details regarding their residence, or the couple's daily routines within the residence. The petitioner has not provided sufficient detailed testimonial evidence to establish that he and M-B- jointly resided together at her parent's house. The testimony of [REDACTED] on appeal also fails to provide definitive information regarding the claimed joint residence. Seeing the petitioner at his in-laws'

¹ Name withheld to protect the individual's identity.

house on three or four occasions is insufficient to establish the petitioner's joint residence there. Similarly, the petition for the dissolution of the petitioner's marriage notes the date of the couple's separation but does not provide any probative information that establishes the couple actually resided together.

Upon review of the totality of the information in the record, the record does not include sufficient evidentiary testimony establishing the petitioner jointly resided with his USC spouse during their marriage. The record is simply deficient in this regard.

Battery or Extreme Cruelty

The director set out the deficiencies in the petitioner's statements regarding his claim that he was subjected to battery or extreme cruelty perpetrated by his USC spouse. On appeal, the petitioner provides the affidavit of [REDACTED] who declares that five days after the marriage, the petitioner came to his house with his sister-in-law and he saw that the petitioner's face was swollen. [REDACTED] notes that he spoke with the petitioner's mother-in-law who told him it was her daughter's fault because she became irate when the petitioner put his hand on her head. The petitioner has not provided further testimony regarding his claim that he was subjected to battery or extreme cruelty perpetrated by his spouse.

Upon review of the petitioner's statements and the statement of [REDACTED] on appeal, the petitioner has not provided probative evidence regarding the abuse allegedly perpetrated by his USC spouse. The petitioner does not provide specific details of the circumstances surrounding the alleged battery incident sufficient to establish the battery occurred and was perpetrated by M-B- or instigated by her. The petitioner's testimony and the testimony of [REDACTED] are insufficient to establish that the petitioner was subjected to battery. Similarly, the petitioner has not established that he was subjected to extreme cruelty perpetrated by M-B-. The petitioner does not provide detail of specific threats or abusive behavior comparable to the behavior described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that M-B-'s behavior was part of an overall pattern of violence or coercion. The petitioner's statements are general and equivocal. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." 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)).

Upon review of the totality of the evidence in the record, the petitioner has not established that he was subjected to battery or extreme cruelty as that term is defined in the statute, regulation, and pertinent case law.

Good Faith Entry into Marriage

The director also set out the deficiencies in the petitioner's testimony regarding his good faith intent

when entering into the marriage. [REDACTED] in his statement on appeal, declares that this was an arranged marriage and that both the petitioner and M-B- and their families were happy with the arrangement. The petitioner provides video clips of the engagement, the marriage ceremony, and the reception. The petitioner, however, has not provided the necessary detailed information to provide insight into his intent when entering into the marriage. The petitioner's indication that he knew his spouse for one month before the marriage and that they communicated via electronic mail is insufficient. The petitioner does detail the couple's meeting, their courtship before and after his entry into the United States, or their claimed shared residence and shared experiences except as it relates to his claim of abuse.

The video clips show that a marriage occurred and that a reception followed; however they are insufficient to demonstrate the petitioner's intent when entering into the marriage. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his USC 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, that he was subjected to battery or extreme cruelty perpetrated by the USC 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.