

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



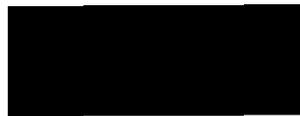
U.S. Citizenship
and Immigration
Services



B9

Date: Office: VERMONT SERVICE CENTER File:

OCT 24 2012



IN RE: Self-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, or a request for a fee waiver. 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,

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 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 U.S. citizen spouse.

The director denied the petition for failure to establish that: the petitioner’s former spouse subjected him to battery or extreme cruelty during their marriage; he entered into their marriage in good faith; he had a qualifying relationship with his former spouse based on a divorce connected to her battery or extreme cruelty; and that he was eligible for immediate relative classification based on such a relationship. On appeal, counsel reasserts the petitioner’s eligibility and submits additional evidence.

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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(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:

(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.

* * *

(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 Niger who entered the United States as a nonimmigrant student (F-1) on November 17, 2001. The petitioner married a U.S. citizen on March 1, 2006 in Connecticut. The petitioner filed the instant Form I-360 on February 14, 2011. The director subsequently issued

Requests for Evidence (RFEs) of, *inter alia*, the petitioner's good-faith entry into the marriage, documentation of his divorce and his former wife's battery or extreme cruelty. The petitioner responded with additional evidence which the director found insufficient to establish his eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief statement and printouts of the petitioner's federal income tax return transcripts for 2006-2008. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the additional evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former wife did not subject him to battery or extreme cruelty during their marriage and counsel's brief assertions on appeal fail to overcome this ground for denial. In his first affidavit submitted below (dated February 10, 2011), the petitioner recounted that approximately a year after their marriage, his former wife began to stay out late on weekends and return home intoxicated. When he confronted his former wife about her activities, the petitioner stated that she became upset, argued with him, cursed him and called him derogatory names. In addition, the petitioner recounted that his former wife had extramarital affairs and abandoned him in 2008 to reside with her mother in another state for approximately six months. After she returned and the former couple reconciled, the petitioner asserted that his former wife began demanding money to support her abuse of alcohol and drugs. When their relationship continued to deteriorate and he asked his mother-in-law for assistance, the petitioner stated that his former wife threatened to have him deported. The petitioner explained that he eventually "couldn't take it anymore of her abuse" so they separated in January of 2010, but continued to see each other occasionally until October 2010, when his former wife told him she had divorced him in May 2010.

In his June 28, 2011 and January 18, 2012 affidavits submitted in response to the director's RFEs, the petitioner reiterated his claims of his former wife's "drinking, using drugs and clubbing;" "derogatory name calling;" abandonment when she moved to her mother's home and her threats of deportation. The petitioner also asserted that his former wife cursed his religion and called him "terrorist nicknames." In his June 19, 2011 letter, the petitioner's friend, [REDACTED] recounted that the petitioner confided in him about his marital issues and that "their marriage was shaking." Mr. [REDACTED] explained, "I was not surprised when he finally told me they broke. The fact is that the lady was too demanding and disrespectful." In his May 19, 2011 letter, the petitioner's Imam expressed his belief that the petitioner had divorced due to religious and cultural differences, but did not attest to any abuse stemming from those differences.

The petitioner did not describe any particular incident of his former wife's threats or verbal abuse in probative detail. His affidavits indicate that his former wife engaged in behavior that was offensive to him personally and to his religion, but his statements do not establish that her actions included physical or psychological abuse, were part of an overall pattern of violence or otherwise constituted extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The statements of the

petitioner's friend and Imam attest to the breakdown of the petitioner's marriage, but their brief assertions contain no probative description of any incident of battery or extreme cruelty.

On appeal, counsel asserts that the director gave insufficient weight to the petitioner's former wife's disrespect for and intolerance of his religion. We find no error in the director's assessment of the petitioner's claims in this regard. The petitioner briefly asserted that during their marriage, his former wife abused alcohol and drugs and had an abortion, actions which were against his religion. The petitioner also claimed that his former wife called him "terrorist nicknames," which was offensive to him because his mosque opposes all forms of violence and terrorism. The petitioner's affidavits and his Imam's letter contain no probative description of any particular incident of verbal abuse involving insults or opposition to the petitioner's religion and the petitioner has submitted no further testimony or other relevant evidence on appeal.

Counsel also claims that the director disregarded the petitioner's former wife's threats of deportation. Counsel asserts that because the petitioner was put in removal proceedings following the denial of the Form I-130, Petition for Alien Relative, filed by his former wife on his behalf, "the threat of deportation by her is indeed a reality." Again, the record does not support counsel's claim. In his affidavits, the petitioner asserted that his former wife threatened him with deportation, but he failed to describe any particular threat in probative detail and did not discuss his former wife's immigrant petition or otherwise indicate how she used that process as a means to control him and have him placed in removal proceedings.¹

The petitioner submitted no new evidence of battery or extreme cruelty on appeal and counsel's brief claims are not supported by the record. The petitioner's affidavits and the letters of his friend and Imam fail to demonstrate that his former wife subjected him to battery or extreme cruelty, as that term is defined 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.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

On appeal, the petitioner has also failed to establish a qualifying spousal relationship with his former wife. In his February 10, 2011 affidavit, the petitioner stated that his wife divorced him in May 2010, but he did not submit documentation of the legal termination of his marriage. Counsel claims that he submitted a copy of the divorce decree below and was also "providing it again" with the appeal, but the record still lacks any documentation of the petitioner's divorce. Consequently, the petitioner has not established that the instant petition was filed within two years of the termination of his marriage, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Even if the petitioner had provided documentation of his divorce, the record would still not demonstrate a qualifying relationship because the petitioner did not establish the requisite battery or extreme cruelty and the connection between his divorce and such battery or extreme cruelty. On appeal, counsel asserts that the petitioner's divorce was granted on the ground that the marriage had "broken down irretrievable with no prospect of reconciliation" and asserts that "[a]n abuse [sic] marriage is a broken down marriage with no chance of reconciliation," but the record lacks any evidence to

¹ The petitioner remains in proceedings before the Hartford, Connecticut Immigration Court and his next hearing is scheduled for October 25, 2012.

support this claim and the petitioner does not discuss the grounds for his divorce in any of his affidavits. Accordingly, the petitioner has not demonstrated that he had a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Entry into the Marriage in Good Faith

On appeal, counsel asserts that the director erroneously concluded that the petitioner did not enter his marriage in good faith because the director did not give sufficient weight to the statements of the petitioner's former mother-in-law and "summarily dismissed and nitpicked" the joint documentation submitted by the petitioner below. We find no error in the director's determination that the relevant evidence submitted below failed to establish the petitioner's good faith in marrying his former spouse. The petitioner submitted copies of seven electricity bills jointly addressed to him and his former wife prior to their separation; a life insurance policy for the petitioner naming his former wife as his beneficiary; partial copies of three joint checking account statements; and copies of unsigned joint income tax returns for 2006 and 2007. On appeal, the petitioner submits IRS transcripts showing that he and his former wife jointly filed federal income tax returns for 2006, 2007 and 2008. This evidence indicates that the petitioner and his wife resided together, shared a bank account for one month in 2008, and two months in 2009 and jointly filed three federal income tax returns during their marriage. The documents are insufficient, however, to demonstrate the petitioner's good faith in entering the marriage as he has failed to provide a probative account of his marital relationship.

In his first affidavit, the petitioner recounted that after he met his wife through an unidentified mutual friend in 2005, they started dating and got married in 2006. He stated, "In the beginning things were so fine I though [sic] my dreams became true." In his second affidavit, the petitioner affirmed, "I married my wife in good faith and treated her with respect and dignity that my religious faith demands." In his third affidavit, the petitioner reiterated: "I married my wife because I loved and cared for her." Despite these brief attestations, the petitioner did not substantively describe his relationship with his former wife, apart from the claimed abuse. He did not recount how they met, their courtship, wedding, joint residence or any of their shared experiences (apart from the alleged abuse). The petitioner's mother-in-law and sister-in-law praise the petitioner's good character and generally attest to his former marriage, but they also provide no probative information regarding his intentions in entering the marriage. The petitioner's Imam states that the petitioner was married and opines that his marital difficulties arose from religious and cultural differences, but he does not indicate that he ever met the petitioner's former wife or has any personal knowledge of the relationship. The petitioner's friends [REDACTED] all briefly state that the petitioner was married and four of them describe the relationship as "happy," but none of them provide probative accounts of any visit with the former couple or otherwise demonstrate their personal knowledge of the relationship.

In sum, the preponderance of the relevant evidence fails to demonstrate that the petitioner married his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to establish a qualifying relationship with his former wife, his corresponding eligibility for immediate relative classification, his former wife's battery or extreme cruelty and his entry into the marriage in good faith. 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.