



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 08 2013** 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)

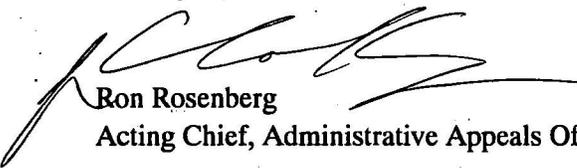
ON BEHALF OF PETITIONER:

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 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,


Ron Rosenberg
Acting 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 on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage and that he entered into their marriage in good faith.

On appeal, counsel submits a brief and 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).

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:

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.

* * *

(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 the Philippines who entered the United States on October 14, 2000 as a nonimmigrant visitor. The petitioner married M-P-¹, a U.S. citizen, in New York City, New York on [REDACTED]. The petitioner filed the instant Form I-360 on March 11, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty and entry into marriage with M-P- in good faith. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record and counsel's brief submitted on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

In his first letter, the petitioner stated that after M-P- suffered from a miscarriage in April of 2010, her attitude towards him changed and she started going out a lot and coming home drunk. He stated that they began to fight more frequently and she admitted to him that she slept with her ex-boyfriend and became pregnant. He did not describe any specific incidents of abuse in probative detail or provide substantive information regarding her treatment of him. In his second letter, the petitioner repeated his earlier statements and again did not describe any specific incidents of abuse in probative detail.

The petitioner also submitted a letter from M-P- and from friend [REDACTED] medical documents pertaining to M-P-'s pregnancy, and photographs of M-P- with an unidentified male. In her letter, M-P- described feeling emotionally devastated after the loss of their baby and leaving the petitioner to recuperate. She stated that during this time she had a one night affair with her ex-boyfriend and became pregnant but that she still loved the petitioner and wanted to make the marriage work. M-P-'s statements did not demonstrate that her actions constituted battery or extreme cruelty as that term is defined in the regulation. [REDACTED] stated that the petitioner's relationship with M-P- became unwell and the two quarreled with each other. He stated that as a result, the petitioner became depressed and lost his jobs. [REDACTED] did not describe any specific acts of abuse in any probative detail or otherwise establish his personal knowledge of the alleged abuse. The medical documents show that M-P- was pregnant but also do not establish that she subjected the petitioner to battery or extreme cruelty. Likewise, the undated photographs of M-P- and an unidentified male fail to establish that M-P- was abusive to the petitioner. The relevant evidence submitted below does not demonstrate that the petitioner's wife ever battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

¹ Name withheld to protect the individual's identity.

On appeal, counsel submits a psychological evaluation from [REDACTED] New York State Licensed Clinical Social Worker (LCSW). Counsel asserts that this evaluation is “independent evidence” that establishes the requisite battery or extreme cruelty. [REDACTED] indicates that the petitioner suffered from Major Depressive Disorder and Posttraumatic Stress Disorder. He states that M-P- repeatedly called the petitioner names and frequently humiliated him. He also describes M-P- as physically aggressive and that she hit, pushed, and threw objects at the petitioner despite the fact that the petitioner made no claims of battery in either of his statements. While we do not question [REDACTED] professional expertise, his assessment is inconsistent with the petitioner’s own statements. When viewed in the aggregate, the relevant evidence submitted below and on appeal is insufficient to establish that M-P- battered the petitioner or that her behavior constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). 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.

Entry into the Marriage in Good Faith

We further find no error in the director’s determination that the petitioner failed to establish that he married M-P- in good faith. The petitioner submitted his letters, letters from friends [REDACTED] and [REDACTED] a letter from M-P-, medical documents, and a receipt for dental work. The medical documents and dental receipt alone fail to establish the petitioner’s good faith intent upon marrying M-P-. Nonetheless, traditional forms of joint documentation are not required to demonstrate a self-petitioner’s entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit “testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.” See 8 C.F.R. § 204.2(c)(2)(vii). In his first letter, the petitioner did not describe in any detail their courtship, wedding ceremony, shared residence and experiences apart from the alleged abuse. In his second letter, the petitioner stated that he met M-P- in a club, was attracted to her, and visited her the next day at her workplace. He stated that he brought her flowers, they went out to dinner, and that after six months, they fell in love and he proposed marriage. He stated that after they were married, he provided for the things that she needed and was very excited when she became pregnant. He did not further describe their courtship, wedding ceremony, shared residence and experiences apart from the alleged abuse.

The letters from the petitioner’s friends submitted below also did not contain probative information regarding the petitioner’s intentions in marrying M-P-. [REDACTED] stated that he is friends with the petitioner and M-P- and that he always saw them having dinner in a restaurant. [REDACTED] stated that she spent several evenings with the petitioner and M-P- and found them to be an entertaining couple. Neither [REDACTED] nor [REDACTED] described any particular visit or social occasion in probative detail or otherwise provided detailed information establishing their personal knowledge of the relationship. Additional evidence was not submitted on appeal. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

(b)(6)

Page 6

Conclusion

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.

ORDER: The appeal is dismissed.