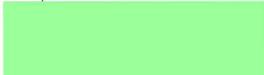


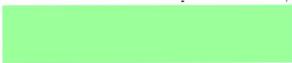
(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **APR 15 2013**

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)

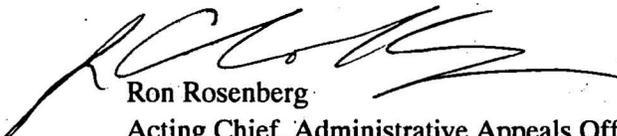
ON BEHALF OF PETITIONER:

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 with the field office or service center that originally decided your case by filing a 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 former U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his former wife in good faith and that she subjected him to battery or extreme cruelty during their marriage.

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).

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 Trinidad and Tobago who last entered the United States on February 14, 2003 as a J-1 exchange visitor. The petitioner married L-W-, a U.S. citizen, in [REDACTED] New York on June 1, 2009.¹ The petitioner filed the instant Form I-360 on March 29, 2010. The director

¹ Name withheld to protect the individual's identity.

subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage and his wife's battery or extreme cruelty. 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). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In the petitioner's initial affidavit, he stated that he met his wife through her brother in 2003. He recounted that they started dating, and in 2004 he decided to live with his wife and her three children from a prior relationship. The petitioner stated that they wed in 2009 and planned to buy a home together. The director correctly determined that the petitioner's brief statement does not discuss in probative detail their courtship, wedding ceremony, or any of their shared experiences during their five years of residing together, apart from the alleged abuse.

In response to the RFE, the petitioner submitted: a second affidavit from his employer, [REDACTED] an affidavit from his wife's stepbrother, [REDACTED] an affidavit from his wife's brother, [REDACTED] and an affidavit from his friend, [REDACTED]. Although the affiants briefly mention engaging with the petitioner and his wife socially, they do not describe any particular social occasion or visit to the couple's residence in detail. Nor do they discuss in probative detail their observations of the petitioner's interaction with or feelings for his wife during their courtship or marriage.

The petitioner also submitted in response to the RFE photocopies of utility bills, a cellular telephone bill, a bank statement, a blank check, and various pieces of mail. The only document that is jointly addressed to the petitioner and his wife is the copy of a blank check, reflecting that they had a joint checking account with [REDACTED] at some point during their courtship or marriage. However, the petitioner failed to submit a corresponding bank statement to reflect whether their joint account had an active status. The remaining documents are in the petitioner's name only.

On appeal, counsel asserts that since the petitioner and his wife only resided together as a married couple from June 2009 until December 2009, they do not have many commingled assets. Counsel submits copies of the Form I-130 (Petition for Alien Relative) and Form I-864 (Affidavit of Support) the petitioner's wife previously filed on his behalf and copies of the financial documentation that was attached to the affidavit of support including, three years of income tax returns the petitioner and his wife filed separately prior to their marriage. Counsel also submits divorce decrees from the petitioner's wife's two prior marriages. Counsel, however, fails to discuss how this evidence establishes the petitioner's entry into his marriage in good-faith.

Counsel notes that the petitioner obtained affidavits from his wife's brother, [REDACTED] stepbrother, [REDACTED] and stepbrother's girlfriend, [REDACTED] confirming that they had a bona fide

marriage. Although these affidavits are of some probative value, they lack sufficient details to establish the petitioner's good-faith entry into the marriage. The petitioner also in his own affidavit failed to discuss in probative detail his courtship with his wife, their wedding ceremony, or shared experiences. The petitioner was informed of these deficiencies in the denial notice, but he failed to submit a supplemental self-affidavit, additional affidavits from friends or family members, or any other relevant evidence on appeal. Accordingly, the petitioner has failed to demonstrate that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We also find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty during their marriage. In his initial affidavit, the petitioner recounted that after their marriage his wife worked long hours and she asked him for money. He stated that he thought that she was having an extramarital affair. The petitioner recounted that on one occasion they had an argument about their cars. He stated that in October 2009 his wife called the police and complained that he wanted to hit her. He stated that after this argument his wife asked him for large sums of money while his immigration case was pending. In the affidavit submitted in response to the RFE, the petitioner briefly recounted that his wife screamed at him, called him names, demanded money from him, controlled their finances and belongings, and had an extramarital affair. The petitioner's statements do not indicate that his 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).

The petitioner's employer, [REDACTED] reiterated the petitioner's statements in his first affidavit. In [REDACTED] second affidavit, he added that the petitioner's wife called the petitioner all the time, complained and demanded money. These behaviors do not constitute extreme cruelty as that term is defined in the regulations.

The petitioner's brother-in-laws, [REDACTED] and [REDACTED] and his friend, [REDACTED] do not discuss having knowledge of any incidents of battery or extreme cruelty in the couple's relationship. They assert that the petitioner separated from his wife in August 2009 and then he resided with his brother-in-law, [REDACTED] for three weeks before he moved into his own apartment. The petitioner, however, stated in his initial affidavit that he resided with his wife until December 2009, during which time she requested large amounts of money from him. The inconsistency in the timeline of events detracts from the credibility of the petitioner's claims.

The petitioner submitted a psychological evaluation from a psychologist, [REDACTED] who diagnosed the petitioner with adjustment disorder with mixed anxiety and depressed mood, chronic type. He reiterated the incidents the petitioner discussed in his initial affidavit. [REDACTED] also added that the petitioner stated that his wife had threatened to accuse him of assault or rape and have him deported if he did not give her \$150 a week for two years. The petitioner, however, did not mention these threats in either of his affidavits.

The director determined that the supporting affidavits did not demonstrate in sufficient detail that the petitioner's wife attempted to control him through psychological means that include emotional abuse,

humiliation, degradation and isolation. On appeal, counsel asserts that the petitioner's wife attempted to control him through psychological means, including having him arrested by the police, calling him names, and isolating him from her children. Counsel submits an addendum to the psychological evaluation in which [REDACTED] opined that the petitioner continues to meet the diagnostic criteria for adjustment disorder with mixed anxiety and depressed mood, chronic type. [REDACTED] stated that during the follow-up evaluation, the petitioner stated that the day before he was scheduled to attend an immigration interview, he was arrested on multiple charges for harassment of his wife, but that after several court appearances he was able to prove that the charges were without merit.² Although counsel contends that the petitioner's wife lied to the police to have the petitioner arrested, the record does not establish that fact or otherwise demonstrate that any of her behavior was comparable to the types of acts 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. 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.

Conclusion

On appeal, the petitioner has failed to establish that he entered into marriage with his wife in good faith and that she subjected him to battery or extreme cruelty during their marriage. 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 for the reasons stated above.

ORDER: The appeal is dismissed.

² The petitioner's previously submitted criminal record reflects that he was arrested for assault, harassment and three counts of aggravated harassment against his wife on January 4, 2010, the day before his adjustment of status interview. The court disposition reflects that the charges against the petitioner were dismissed on September 21, 2010.