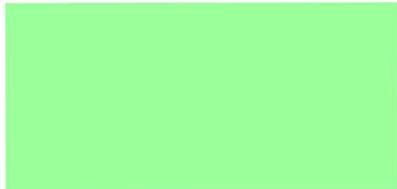




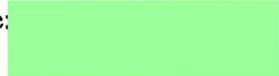
U.S. Citizenship
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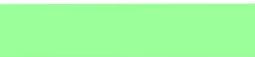
Office: VERMONT SERVICE CENTER File:



APR 18 2013

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 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 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 request 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 that any motion must 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 Vermont 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 that his wife subjected him to battery or extreme cruelty during their marriage and that he entered into the marriage in good faith. On appeal, counsel submits a brief and copies of U.S. Citizenship and Immigration Services (USCIS) memoranda.

Applicable Law

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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:

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.

Facts and Procedural History

The petitioner is a citizen of Korea who entered the United States on March 28, 2002, as a nonimmigrant visitor. On [REDACTED] he married a U.S. citizen in Nevada. The petitioner filed the instant Form I-360 on March 28, 2011. The director subsequently issued a request for additional evidence (RFE) of, *inter alia*, the petitioner's wife's battery or extreme cruelty and his entry into the marriage in good faith. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty and good faith marriage.

On appeal, counsel asserts that the evidence submitted below and on appeal demonstrates that the petitioner's wife subjected him to battery and extreme cruelty during their marriage and that the petitioner entered into his marriage in good faith.

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 fails to demonstrate the petitioner's eligibility for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below fails to demonstrate the petitioner's entry into his marriage in good faith. In his first declaration, the petitioner stated that he met his wife in Las Vegas and that they exchanged contact information. After a second trip to Las Vegas, he and his wife called each other often. The petitioner recounted that he proposed to his wife, and was happy when she accepted. They were married and moved in together in Denver, Colorado. In response to the RFE, the petitioner submitted a second declaration in which he stated that after they moved in together he caught his wife having an extramarital affair. The petitioner did not further describe how he met his wife, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner also submitted affidavits from friends who briefly stated that they were aware of the petitioner's marriage but provided no probative information regarding the petitioner's good faith in entering the relationship. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married his wife in good faith.

The director also accurately assessed the relevant documents submitted below. The petitioner submitted energy bills and a lease which show that he resided with his wife but do not establish his intentions in entering into the marriage. The photographs of the petitioner with his wife on a few unspecified occasions are not accompanied by any explanation of their significance.

On appeal, the petitioner submits no new evidence. In his brief, counsel asserts that the erroneously required both spouses to be mutually responsible for payment of the lease and upkeep. While counsel is correct that shared financial accounts are not required to establish an abused self-petitioner's good-faith entry into the marriage, we find no error in the director's ultimate determination that the preponderance of the evidence did not establish that the petitioner entered into the marriage in good faith. 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(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 evidence will be considered." 8 C.F.R. § 204(c)(2)(vii). In this case, however, the testimonial evidence submitted does not demonstrate the petitioner's entry into his marriage in good faith. In his affidavits, the petitioner does not describe their courtship, wedding, joint residence or any of their other shared experiences, apart from the alleged abuse, in probative detail. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for his wife during their courtship or marriage or otherwise establish their personal knowledge of the relationship. 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

In his initial affidavit, the petitioner recounted that his wife was physically violent, hit him in the face with her hand and called him offensive names. The petitioner stated that at one point he found his wife in bed with another woman. In his second personal statement, the petitioner repeated that he discovered that his wife was having a sexual relationship with another woman.

The petitioner submitted a psychological evaluation written by [REDACTED] a licensed clinical psychologist, who interviewed the petitioner for four hours and determined that the petitioner was experiencing symptoms consistent with a diagnosis of post-traumatic stress disorder (PTSD). The evaluation repeated the petitioner's claims and added that the petitioner's wife slapped and slugged him, gambled and drank. In his own statements, however, the petitioner himself never mentioned being slugged by his wife, or that she gambled and drank. The psychologist also asserted that the petitioner suffered from hives, headaches, hyperthyroidism and high cholesterol, but the record does not establish that these conditions were related to the claimed abuse. The psychologist's report does not offer any probative descriptions of any particular incidents or acts comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). There is no indication that the petitioner's wife's non-physical behavior was accompanied by coercive actions, threats of harm, or was otherwise part of an overall pattern of violence, and the petitioner and the psychologist's brief references to battery are insufficient to establish physical violence.

The director found the relevant evidence submitted below insufficient to support the petitioner's claims of abuse. On appeal, counsel reasserts the petitioner's eligibility and contends that the director must consider all evidence submitted and submits two USCIS memoranda discussing the Violence Against Women Act. Counsel is correct that for self-petitioning abused spouses, the statute prescribes an evidentiary standard, which mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). The regulations do not require a self-petitioner to submit primary, corroborative evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i) ("The self-petitioner may, but is not required to demonstrate that preferred primary or secondary evidence is unavailable."). However, this evidentiary standard is not equivalent to the petitioner's burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence, but "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof.

Here, the director considered all the relevant evidence submitted by the petitioner below. As explained in the preceding discussion, the relevant evidence is insufficient to meet the petitioner's burden of proof that his wife subjected him to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. As explained above, the relevant evidence submitted below fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The petitioner's brief statements that his wife hit him and threw things at him lack substantive, detailed information sufficient to demonstrate that his wife battered him. The other acts the petitioner describes are not comparable to those described in the regulation at 8 C.F.R.

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§ 204.2(c)(1)(vi) as extreme cruelty. Accordingly, the petitioner has not established by a preponderance of the evidence 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

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.