

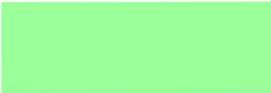


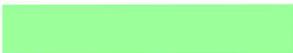
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 14 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:

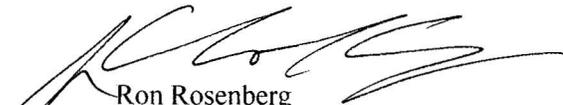


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center, (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed and 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 denied the petition for failure to establish that the petitioner entered into marriage with his U.S. citizen spouse in good faith. On October 16, 2012, the AAO dismissed the appeal on this same ground.

On motion, the petitioner, through counsel, submits a supplemental 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:

(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.

* * *

(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 Burkina Faso who entered the United States as a B-2 visitor on August 5, 2002. The petitioner married S-P-¹, a U.S. citizen, in New York, New York on February 29, 2008. The petitioner filed the instant Form I-360 on October 12, 2010. The director denied the petition for failure to establish the petitioner's good-faith entry into his marriage. The petitioner, through counsel, timely appealed and the AAO dismissed the appeal on October 16, 2012. The petitioner submitted a timely motion to reopen and reconsider.

On the motion to reconsider, counsel incorrectly asserts that the director did not follow U.S. Citizenship and Immigration Services (USCIS) regulations by failing to issue a Notice of Intent to Deny (NOID) before denying the petition. Counsel cites to 8 C.F.R. § 103.2(b)(16)(i) asserting that in the event of an adverse decision based on derogatory information unknown to the petitioner, the petitioner must be advised of this prior to the decision and be afforded the opportunity to rebut this information. Counsel does not, however, identify any derogatory information relied upon by the director that was unknown to the petitioner. Counsel also does not state how the AAO's prior decision affirming the director's denial was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3).

Counsel cites two unpublished, non-precedent decisions of the AAO remanding cases to the Service Center director to issue a NOID in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii)(2006). That regulation was amended in 2007 to remove the requirement that a NOID be issued before a final adverse decision was made. Here, the petitioner was nonetheless afforded

¹ Name withheld to protect the individual's identity.

the opportunity to respond to the deficiencies of his case when the director issued a Request for Evidence (RFE) to establish the petitioner's good faith entry into marriage with S-P- prior to the director's decision denying his self-petition on this ground. Counsel's brief also fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. *See id.* (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

Counsel's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Counsel asserts that the petitioner entered into his marriage with S-P- in good faith. On motion, counsel's assertion is supported by an additional affidavit from the petitioner. Accordingly, the motion to reopen is granted.

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 establish the petitioner's eligibility. The petitioner's claims and the new evidence submitted on motion do not overcome the director's ground for denial. The appeal will remain dismissed for the following reasons.

Good-Faith Entry into Marriage

In its prior decision, the AAO determined that the petitioner had not established that he entered into marriage with S-P- in good faith because he failed to provide probative evidence regarding their courtship, engagement, wedding, joint residence or any of their shared experiences. The AAO decision on October 16, 2012 is incorporated here. On motion, the petitioner submits another affidavit in which he repeats his statements below, providing some additional details about their first date and subsequent interactions. The petitioner briefly lists their activities and spending time together with family over the holidays. He states he proposed to S-P- on Thanksgiving day because they wanted the same things out of life and then he proposed again on Christmas day. He states that they got married on February 29, 2008 in the presence of their friends and S-P-'s cousin. The petitioner does not further describe their engagement, wedding, joint residence or any of their shared marital experiences. The petitioner does not add any probative information to the affidavit and letters he previously submitted. Therefore the additional affidavit submitted on motion fails to establish by a preponderance of the evidence that the petitioner entered into marriage with S-P- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not established that he married S-P- in good faith. The appeal will remain dismissed and the petition will remain denied.

ORDER: The motion to reopen is granted. The October 16, 2012 decision of the Administrative Appeals Office is affirmed and the petition remains denied.