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U.S. Citizenship
and Immigration
Services

Date: Office: VERMONT SERVICE CENTER

AUG 28 2013

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)

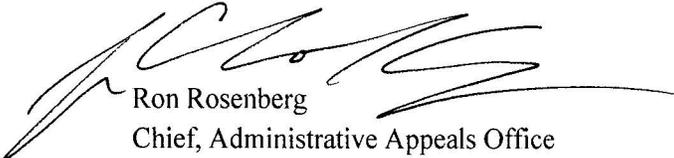
ON BEHALF OF PETITIONER:

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 Director, Vermont Service Center, (“the director”) revoked approval of the immigrant visa petition after properly notifying the petitioner and the Administrative Appeals Office (AAO) summarily dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The appeal will remain dismissed and approval of the petition will remain revoked.

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 United States citizen spouse.

The director revoked approval of the petition on the basis of his determination that the petitioner failed to establish that he resided with his U.S. citizen wife and that she subjected him to battery or extreme cruelty during their marriage. On motion, the petitioner, through counsel, submits a brief.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

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.

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. . . .

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Vietnam, married K-M-¹, a citizen of the United States, on July 24, 2006 and the two were divorced on May 27, 2008. He filed the instant Form I-360 on September 4, 2009 and it was approved on May 4, 2010. The director issued a Notice of Intent to Revoke (NOIR) approval of the self-petition on November 18, 2011 because U.S. Citizenship and Immigrations Services' (USCIS) learned that the petitioner provided false information on his application for his nonimmigrant visa which called into question his credibility. The director stated that after a full review of the administrative record, the petitioner had failed to establish that he jointly resided with K-M- during their marriage and that he was subjected to battery or extreme cruelty by her. The petitioner, through counsel, submitted a response which the director found insufficient to overcome his proposed grounds for revocation. The director revoked approval of the petition on October 15, 2012. The AAO summarily dismissed the petitioner's appeal on May 17, 2013 because the AAO had not received the brief or additional evidence counsel indicated he would submit. The petitioner submitted a timely motion to reopen.

The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner, through counsel, asserts that the evidence submitted on appeal was not taken into consideration by the AAO in its summary dismissal decision. Counsel submits documentation that the additional evidence was timely filed and also resubmits the evidence previously filed on appeal. Accordingly, the motion to reopen is granted.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's grounds for revocation. Beyond the director's decision, the petitioner has also not established that he is eligible for immediate relative classification based upon a qualifying relationship with a U.S. citizen.² The appeal will remain dismissed and approval of the petition will remain revoked for the following reasons.

¹ Name withheld to protect individual's identity.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

Joint Residence

The director correctly determined that the record below failed to demonstrate that the petitioner resided with K-M-. The petitioner stated on his Form I-360 that he resided with K-M- from July of 2006 to June of 2007. The record contains the petitioner's self-affidavits, affidavits and declarations from friends, and a joint bank statement. The joint bank statement, though addressed to both the petitioner and K-M-, is dated a year after the two divorced and does not establish that they resided together.

Nonetheless, traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). The petitioner did not, in either of his affidavits, describe his shared residence with K-M- in any probative detail. In his first affidavit, the petitioner stated that after he married K-M-, they lived with her family. He did not describe their home, shared belongings and residential routines or provide any other substantive information sufficient to demonstrate that he resided with K-M- after their marriage. In his second affidavit, the petitioner repeated his earlier statements and again failed to provide probative information regarding their shared residence apart from the claimed abuse. The affidavits from the petitioner's friends attested to knowing the petitioner and K-M- as a married couple but did not describe any specific visit to their shared marital residence in probative detail.

On motion, counsel asserts that the director failed to evaluate the petitioner's evidence using the any credible evidence standard. In the petitioner's affidavit submitted on appeal and resubmitted on motion, he does not provide any probative information regarding his joint residency with K-M-. Further, a review of the administrative record shows contradictory information of different addresses and dates for the petitioner's residences which were not explained below and are not explained on motion. The lack of probative detail in the petitioner's self-affidavits, the affidavits from his friends, and the deficiency of the record provided the director with good and sufficient cause to revoke approval of the instant petition. In sum, the preponderance of the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner resided with his former wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal does not demonstrate that the petitioner was subjected to battery or extreme cruelty by his former wife. In his first affidavit, the petitioner stated that after they got married, things were good between him and K-M- but that he spent a lot of money to keep her happy. The petitioner stated that K-M- liked to go to parties and that when his savings began to run out, her attitude towards him began to change. He stated that K-M- began to insult him, frequently threatened to have him deported, and that everything he said or did led to an argument. The petitioner recounted that K-M- agreed to move into their own apartment but then refused to leave with him after he found a place. He stated that he was devastated when she asked for a divorce. In his second

affidavit, the petitioner repeated much of his earlier statements and added that K-M- frequently cursed at him.

The record also includes declarations from friends and a psychological evaluation from [REDACTED] who has a masters in Social Work (MSW) and is a licensed clinical social worker (LCSW). The petitioner's friends all briefly stated that the petitioner would talk about being mistreated by his wife but they did not provide probative information about any specific acts or whether any of the claimed abuse was witnessed firsthand. In her psychological evaluation, [REDACTED] stated that the petitioner experienced verbal and emotional abuse in his marriage. While we do not question Ms. [REDACTED] professional expertise, her assessment of the abuse is based on her interviews of the petitioner, and her assessment provides no further, substantive information regarding the claimed abuse.

In his appellate brief resubmitted on motion, counsel argues that the director erred in rejecting credible evidence by dismissing the petitioner's and his friends' accounts of the claimed abuse but does not demonstrate how their statements show that K-M-'s behavior constituted battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not submit additional evidence on motion regarding the claimed abuse. A review of the record fails to establish that K-M- 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 former 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.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will remain dismissed and the approval of the petition will remain revoked for the reasons stated above.

ORDER: The motion to reopen is granted and the appeal is dismissed.