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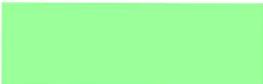
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

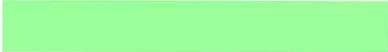


U.S. Citizenship
and Immigration
Services



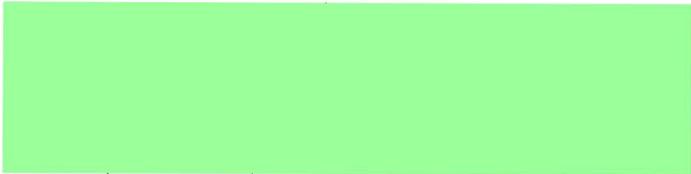
Date: **DEC 12 2013** Office: VERMONT SERVICE CENTER

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:

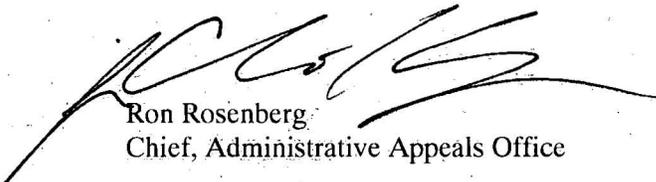


INSTRUCTIONS:

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 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 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 for failure to establish that the petitioner was subjected to battery or extreme cruelty during his marriage, and was a person of good moral character.

Counsel provided a timely appeal and previously submitted 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 for immigrant classification as an abused spouse under 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(1), which states the following:

(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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

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:

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Jamaica who entered the United States (U.S.) on May 31, 2001 as a nonimmigrant temporary worker. On November 10, 2004, the petitioner married L-J¹, a U.S. citizen. In 2007, the petitioner filed a prior Form I-360 based on his relationship with L-J-. Although that petition was initially approved, the approval was revoked on notice on April 8, 2009.

The petitioner filed the instant Form I-360 on January 14, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character, and evidence that L-J- subjected him to battery or extreme cruelty. The petitioner, through counsel, responded with further documentation. On August 8, 2012, the director denied the petition, finding the additional evidence was insufficient to establish the petitioner was a person of good moral character and had been subjected to battery or extreme cruelty.

On appeal, counsel contends that the petitioner is a person of good moral character and L-J- subjected her husband to battery and extreme cruelty.

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 appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

De novo review of the relevant evidence submitted below fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The relevant evidence in the record consists of the petitioner's statement and declaration, letters from his friends and son, and a letter from his landlord.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). Congress's intent in allowing a showing of either battery or extreme cruelty was to protect survivors of domestic violence. See H.R. Rep. No. 103-395, at 37-38. The petitioner asserted in his statement and declaration that his marriage was good until his wife started gambling in December 2005. He briefly stated that his wife was physically aggressive to him and called him names when they argued about her gambling. He also briefly asserted that his wife was not truthful at his immigration interview, refused to perform household chores, forced him to sleep on the couch, was "controlling" and belittled him, locked him out of their apartment, and once threw his suitcase at him and told him to get out and threatened to file false charges against him. The petition did not describe in detail any incident where his wife battered him, threatened him with physical harm, or subjected him to a pattern of violence or other behavior that was equivalent to extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

¹ Name withheld to protect individual's identity.

The petitioner also submitted affidavits from his friends [REDACTED] and [REDACTED] his son; and his landlord. Ms. [REDACTED] briefly stated in her letter that she never met L-J-, but the petitioner told her L-J- gambled. Ms. [REDACTED] briefly asserted that the petitioner was upset because L-J- called him names and gambled and had locked him out of their house. Ms. [REDACTED] briefly stated that in May 2005 L-J- refused to drive the petitioner to cash his check, and in August 2006 locked him out of their house and threatened to call the police on him. The petitioner's son stated that his father told him that L-J- gambled away their money and he was helpless to do anything about it. Mr. [REDACTED] the petitioner's landlord, briefly stated that in January and March 2007 the petitioner needed a room to rent because he and his wife were having marital problems. The brief assertions of the petitioner's friends, son, and landlord are not probative in establishing that L-J- ever battered or threatened her husband with violence, or subjected him to conduct that amounted to extreme cruelty.

On appeal, counsel states that the petitioner previously filed a Form I-360 which was approved, but the director revoked approval of the petition solely because the petitioner did not marry his wife in good faith. Counsel states that in the instant case the director determined that the petitioner entered into his marriage in good faith, but failed to demonstrate that his wife subjected him to battery or extreme cruelty. Counsel asserts that the director's determination that the petitioner was not subjected to abuse is contradictory because the petitioner demonstrated the requisite abuse in the previously approved Form I-360. Counsel does not acknowledge that approval of that petition was revoked and any former determinations regarding that petition are not binding on the current case. Moreover, U.S. Citizenship and Immigration Services (USCIS) is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. *Matter of Church Scientology Intl.*, 19 I&N Dec. 593 (BIA 1988); *Matter of M*, 4 I&N Dec. 532 (BIA, 1952; and A.G., 1952) (Service has *de novo* review).

Counsel states that L-J- subjected the petitioner to abuse, which is described in detail in the petitioner's statement and declaration, and the affidavits from his friends, son, and landlord. The preponderance of the relevant evidence does not demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The petitioner's statements are brief and do not describe any incident where his wife's behavior included battery or extreme cruelty. The petitioner's friends, son, and landlord do not describe having any personal knowledge of L-J- battering or threatening him with physical harm, or subjecting him to conduct that is equivalent to extreme cruelty. Accordingly, when the relevant evidence is viewed in the totality, the petitioner has not demonstrated 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.

Good Moral Character

The petitioner submitted affidavits from friends and a fingerprint card to establish he is a person of good moral character. The director found the affidavits and fingerprint card were insufficient to demonstrate the petitioner's good moral character because they were submitted more than three years prior to the filing of the instant Form I-360 petition. The director issued a RFE of the requisite good moral character of the petitioner. In response, the petitioner submitted a letter from the Criminal Records and Identification Division with the [REDACTED] certifying that the petitioner has

no criminal record in [REDACTED] based on a name and date of birth search. The petitioner also submitted a May 8, 2007 letter from his friend [REDACTED]. This evidence was insufficient to establish the petitioner's good moral character because he had previously lived in the State of New Jersey during the three years immediately prior to filing the Form I-360, and did not provide evidence of his good moral character in the form of a local police clearance or a state-issued criminal background check from that location. On appeal, counsel asserts that the petitioner is a person of good moral character and nothing in the record suggests otherwise.

To establish good moral character, the regulation requires a "local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition." 8 C.F.R. § 204.2(c)(2)(v). The record shows that the petitioner resided in [REDACTED] New Jersey for over three years and was residing in that city at the time this petition was filed. The regulation permits the submission of other evidence of good moral character if police clearances or criminal background checks are unavailable for certain locations, and while the petitioner has provided a letter from a friend attesting to his good moral character, he has not explained why a local police clearance letter from the [REDACTED] Police Department or a New Jersey criminal background check is not available or why he could not contact the [REDACTED] Police Department or the appropriate state criminal record bureau in New Jersey to obtain the requisite clearance. Accordingly, the petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The preponderance of the relevant evidence does not demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage, and that the petitioner is a person of good moral character. Consequently, the petitioner is 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *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.