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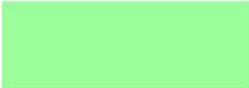
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

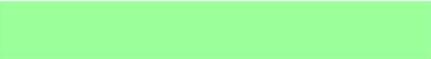


U.S. Citizenship
and Immigration
Services



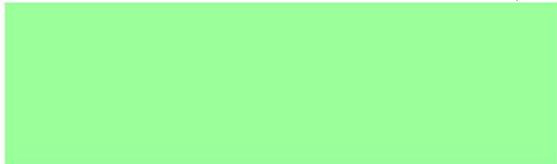
Date: **DEC 12 2013**

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:

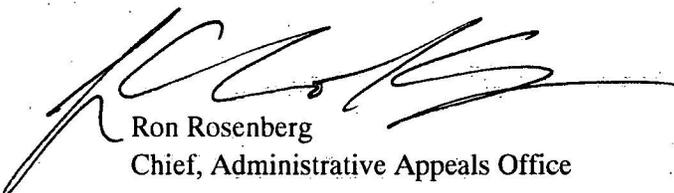


INSTRUCTIONS:

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 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 U.S. citizen spouse.

The director denied the petition for failure to establish the petitioner's good moral character. The director further concluded that the petitioner had failed to demonstrate that he entered into marriage with his U.S. citizen wife in good faith and that he had been subjected to battery or extreme cruelty by his wife during their marriage. On appeal, counsel submits a 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:

(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 or

the self-petitioner's child, 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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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.

* * *

(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:

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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.

* * *

(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 France who entered the United States on June 30, 2011 as a visitor under the Visa Waiver Program for an authorized period of stay not to exceed September 28, 2011. He subsequently married his current wife, J-P-¹ a U.S. citizen, on September 25, 2011 in Los Angeles, California.

The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on June 19, 2012. The director subsequently issued two Requests for Evidence (RFEs) of, amongst other things, the petitioner's good moral character, his good faith marriage, and the battery or extreme cruelty to which he was subjected. The petitioner timely responded to the RFEs. After considering the evidence of record, the director denied the petition on January 11, 2013. The petitioner filed a timely appeal.

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. On appeal, the petitioner has failed to overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

¹ Name withheld to protect individual's identity.

Good-Faith Entry Into The Marriage

The record fails to establish that the petitioner entered into his marriage with J-P- in good faith. The petitioner submitted a 2012 joint lease agreement, two cable bills, photographs, and a personal automobile insurance policy, effective January 24, 2012. The lease agreement for a residence at [REDACTED] Los Angeles shows that both the petitioner and his wife signed the document. The two cable bills for the period from January through March 2012 list only the petitioner on the bill at the [REDACTED] address. Similarly, the automobile policy is addressed to the petitioner and only shows that the petitioner's wife is an included driver. The documentary evidence, including the photographs of the couple, does not provide any probative information to establish the petitioner's marital intentions. On appeal, counsel resubmits the automobile policy record and asserts that additional documents regarding the petitioner's good-faith intentions are not available because his wife took his personal property and community property, including photograph albums with wedding and family photographs, receipts, and official documents.

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), 204.2(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 relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii).

The petitioner, in his first statement, dated June 8, 2012, stated that he married his wife after a short period of dating because he loved her and seemed to have a lot in common with her, but he did not describe in any probative detail the couple's courtship, wedding ceremony, and shared residences and experiences, apart from the claimed abuse. In response to a RFE, the petitioner submitted a second statement, dated November 28, 2012, in which he recounted being introduced to his wife by his friend in July 2011 and discussed in more detail the couple's courtship. The petitioner also discussed his father's visit to the United States to meet the petitioner's wife in early December 2011, and stated that during this visit, they took a road trip and spent the holidays together. The petitioner noted that his wife kept all the pictures taken during this trip. The petitioner's second statement, like his first, does not describe or reference the couple's wedding ceremony, or probatively describe their shared residences and experiences during their marriage, apart from the claimed abuse.

On appeal, the petitioner submitted the statement of his father, [REDACTED] who confirmed that he traveled to Los Angeles to stay with the petitioner and J-P- in December 2011. The petitioner's father stated that he made the trip because he was unable to attend the petitioner's September 2011 wedding for "professional reasons." However, this statement contradicts the petitioner's account that he only told his parents about his marriage after he and his wife were already married. Further, while the petitioner indicated that his father visited and traveled with the couple in the United States for at least three weeks, Mr. [REDACTED] stated that he was only in the United States from December 9 through December 19, 2011, approximately a week and a half stay. Finally, Mr. [REDACTED] stated that during this trip, he and the petitioner had a "father and son" trip as "bachelors," touring the American West and talking about the petitioner's future and plans. He specifically recounted that during this time, the petitioner's wife was on a small tour with her music group, but that he spent two days following the road trip at the petitioner's home in [REDACTED] and took the couple out to dinner one evening.

Mr. [REDACTED] account is inconsistent with the petitioner's description of the road trip in his second statement:

My father couldn't wait to meet [J-P-] so he came to Los Angeles in early December 2011. We took a 3 week road trip and spent the holidays together.[] We crossed 10 states with him sightseeing, we took lots of pictures and he went back to France in the end of December.

The record does not contain an explanation for this discrepancy. Additionally, the petitioner's father's statement only briefly describes interacting with the petitioner and his wife on one occasion at dinner. He does not describe the interactions between the couple and also does not offer any insight into their relationship or the petitioner's marital intentions.

On appeal, the petitioner also submitted copies of email correspondence apparently exchanged between the petitioner and his spouse in August 2012 after their separation. Some of the earlier reply messages from the petitioner appear to have been hidden, but the remaining messages reflect the petitioner's repeated requests to his wife for the return of his property. The messages provide no probative information about the petitioner's good faith intentions at the time he entered into, and during, his marriage. Accordingly, when viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner 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

On appeal, counsel states that a police report of J-P-'s battery is unavailable and claims that the director erroneously denied the petition for failure to submit such documentation. 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).

In his June 8, 2012 statement, the petitioner claimed that his wife was unstable and abusive, and that she threatened to have him deported back to France and take his personal belongings when he asked her for a divorce. The petitioner also described two incidents of battery by his wife. On the first occasion, he stated that his wife threw a drink at his face and punched him in the head at a bar when she saw him talking to another girl. According to his statement, after receiving a text message from his wife, he returned home that evening to find some of his things in the street. The petitioner recounted how his wife repeatedly punched him in the head when he went inside the apartment. He stated that he left and called the police. No one was arrested on this occasion. After staying at a friend's house that night, the petitioner indicated that he returned the following day accompanied by his friend and two police officers to get his belongings from the couple's apartment. The petitioner indicated that he moved out for approximately two months, but eventually reconciled with his wife and moved back to couple's [REDACTED] He then recounted a second incident of battery by his wife, which occurred later, after he and his wife had agreed to a divorce and after he had moved to his own apartment in Los Angeles. The petitioner indicated that about three days after moving, his wife and a friend showed up at 2:00 in the morning at his apartment and tried to force

themselves into the apartment. He described his wife grabbing and kicking him in the face. The petitioner relayed that when the police arrived, they arrested him, despite the obvious fact that it was his home and that he was the one that was injured. The record shows that this arrest occurred on April 12, 2012. The petitioner stated that his wife dropped the charges against him but he was transferred to immigration custody. The California criminal history record proffered by the petitioner shows he was arrested April 12, 2012 for Corporal Injury to Spouse in violation of section 273.5(a) of the California Penal Code. The record shows that the petitioner has not been convicted of that charge, but does not establish whether or not criminal charges were ever filed against him.

In his second statement, the petitioner noted that his relationship with his wife "began to unravel" when they moved into their new apartment at [REDACTED] in February 2012. He recounted how they began to argue a lot because while he worked long hours daily, his wife did nothing to help him pay household bills or perform household chores. The petitioner stated that she threatened him that she would have him deported, but this time, he indicated that his wife also threatened that she knew people who "would take care" of him, if he left her. He asserted that J-P- would cry, yell, push, and throw things at him, and again recounted the two incidents where his wife physically attacked him. In describing the second incident of battery by his wife, the petitioner added that the morning before his arrest, he received a threatening text message from his wife, which he did not mention in his first statement.

The petitioner's two accounts of the abuse are inconsistent and detract from the credibility of his claim. In his first statement, he indicated that his relationship with his wife fell apart quickly soon after their September 2011 marriage. He also described the first incident of battery as having occurred while he and his wife were still residing at their old "[REDACTED]" apartment. However, in his second statement, the petitioner stated that his relationship only began to unravel after they had moved to their new apartment in February 2012. Additionally, the petitioner's description of the first incident of battery and the events leading up to it are contradictory in his two statements. In the first, the petitioner stated that his wife threw a drink at his face and punched him in the head at the bar for talking to a girl. In his second statement, the petitioner recounted only that his wife threw a drink at both his face and his friend's face, before walking away and leaving the bar. He made no mention of his wife punching him in the head. Similarly, in his first statement, he stated that following this confrontation in the bar, he went back to his apartment and went inside, where his wife repeatedly punched him in the head. He stated that he then left the apartment and called the police. However, in his second statement, he described calling the police before going into the apartment and before the physical altercation with his wife. Lastly, the petitioner asserted in his first statement that he returned to the apartment the next day, accompanied by two police officers, to obtain his belongings. However, he stated in his second statement that he went to the apartment first, and because she refused to let him get his belongings, both of them called the police. Moreover, he stated that six officers, not two, were present while he removed his property from the apartment. The noted inconsistencies detract from the credibility of the petitioner's claim of battery. The petitioner's statements also do not show that his wife's other behaviors 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).

On appeal, counsel also submitted statements from three of the petitioner's neighbors regarding the petitioner's arrest in April 2012, stating their belief that the petitioner was wrongfully arrested on that date. The statements reflect that none of the affiants knew the petitioner's wife at the time of the arrest, and that prior to the arrest, had only met or seen the petitioner in passing as he moved into his new apartment. The affiants describe two women screaming outside of the petitioner's apartment. [REDACTED] and her mother, [REDACTED] indicate that they witnessed the incident through a peephole in their apartment door. [REDACTED] stated that she saw one of the women start to hit and scratch the petitioner and [REDACTED] described seeing the petitioner with an injured lip and scratches on his arms and shins after the police arrived, although the petitioner himself stated that he was only hurt in the face. The third neighbor, [REDACTED] recounted seeing one woman shouting outside of the petitioner's apartment. The statements of the petitioner's neighbors confirm that an altercation between the petitioner and two women occurred in April 2012, but they do not establish that they knew or recognized the petitioner's wife as the person who injured him during this incident.

The petitioner's father stated in his letter that after returning to France following his visit with the petitioner and J-P- in December 2011, the petitioner indicated over the phone that he was stressed and worried about his wife's behavior, that she was difficult to manage, and that she was threatening him with deportation by not completing his immigration papers. However, his statement offers no probative details regarding any specific incidents of battery or extreme cruelty. Moreover, the petitioner's father indicates that when he left the couple in December 2011, he was reassured about their relationship, and that problems in the relationship began sometime afterwards. While this assertion conforms to the petitioner's second statement, it contradicts the petitioner's first statement, in which the petitioner stated that the relationship "fell apart quickly" following their marriage and discussed various incidents which occurred prior to his father's December 2011 visit, while the couple was still residing at their [REDACTED] apartment.

The personal email correspondence between the petitioner and his wife submitted on appeal also fails to establish that the petitioner's wife subjected him to battery or extreme cruelty. Counsel asserts that the messages show the petitioner's abusive wife's instability and that she stole the petitioner's property. However, the petitioner's wife indicated in the messages that she originally placed the petitioner's property with a pawn shop because she was unable to pay for storage and for lawyer's fees for the petitioner when he was in immigration custody. Moreover, in her messages to him, she accused the petitioner of manipulating her, lying, hitting her, and assaulting her friend, and stated that she was fearful of interacting with him due to his violent nature. The email correspondence does not show that the petitioner's wife threatened or engaged in other behavior during the couple's marriage that constituted battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel asserts that the director improperly denied the instant petition for failure to provide copies of the police report for the April 2012 arrest to show that it was the petitioner's wife who physically attacked him on that occasion. On appeal, the petitioner has demonstrated that a copy of the police report was in fact unavailable because the local police department is not authorized to provide reports without authorization from the alleged victim of the crime, who in this instance was the petitioner's wife. Counsel does not, however, explain whether the petitioner

attempted to obtain a copy of the police report for the earlier incident, where both the petitioner and his wife apparently called the police on the night of an altercation and again the following day, when the petitioner moved his property out of the couple's apartment.

Upon *de novo* review, the relevant evidence in the record, including the petitioner's two statements and the statements of his father and neighbors, does not establish that the petitioner's wife battered him or subjected him to extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi), and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The petitioner has still failed to demonstrate his good moral character on appeal. Primary evidence of a self-petitioner's good moral character is his or her affidavit. 8 C.F.R. § 204.2(c)(2)(v). The affidavit should be accompanied by police clearances or state criminal background checks as specified in the regulation. *Id.* In his first declaration, the petitioner did not discuss his moral character. In response to the second RFE, the petitioner submitted a California criminal history report showing that he was arrested on April 12, 2012 for inflicting corporal injury upon his spouse. The report did not state any disposition of the arrest. In his second declaration, the petitioner again failed to discuss his moral character and asserted that the day after his April 12, 2012 arrest, the charges were dropped. On appeal, the petitioner has submitted no affidavit regarding his moral character. Accordingly, the record lacks this primary evidence of good moral character required by 8 C.F.R. § 204.2(c)(2)(v).

On appeal, the petitioner submits a printout from the website of the [REDACTED] Police Department, which states that copies of police reports can only be released to victims or victims' representatives. Counsel asserts that because the petitioner's wife was the listed victim of the April 2012 incident, a report of the petitioner's arrest is unavailable without her authorization and the California criminal history record shows that no court action was pursued. However, the printout from the police department website also states that individuals may contact the Records and Identification Division for information about the disposition of arrests. Neither counsel nor the petitioner states whether the petitioner attempted to obtain the disposition of his arrest from the [REDACTED] Police Department.

Counsel also asserts on appeal that the director erred in finding that the petitioner did not establish his good moral character, because the record contained "numerous letters [] attesting to the [p]etitioner's good character and nothing in the record indicate[s] otherwise." However, contrary to counsel's assertion, the only statements in the record, aside from the petitioner's, are from his father and his three neighbors. None of these statements address the petitioner's character. Additionally, the neighbors' statements further reflect that they know the petitioner only in passing and thus, cannot knowledgeably attest to the self-petitioner's good moral character. Moreover, as previously discussed, the neighbors' statements do not establish that the petitioner's wife was the perpetrator and physically assaulted the petitioner in the incident leading to the petitioner's arrest on April 12, 2012. Although the petitioner has shown that he cannot obtain the police report of this incident without his wife's consent, he has not discussed whether he attempted to obtain the disposition of his

arrest. The petitioner has also failed to submit any personal statement regarding his moral character, which is primary evidence of good moral character required by 8 C.F.R. § 204.2(c)(2)(v).

Consequently, under a *de novo* review of the relevant evidence in the record, the petitioner has failed to establish his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to demonstrate his good moral character, that he entered into marriage with his U.S. citizen wife in good faith and that he was subjected to battery or extreme cruelty by his wife 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); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.