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

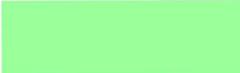


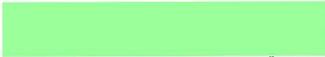
U.S. Citizenship
and Immigration
Services



Date: FEB 04 2013

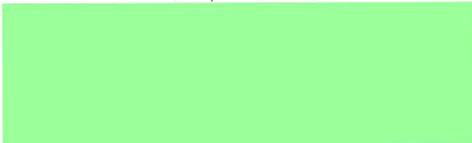
Office: VERMONT SERVICE CENTER

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:

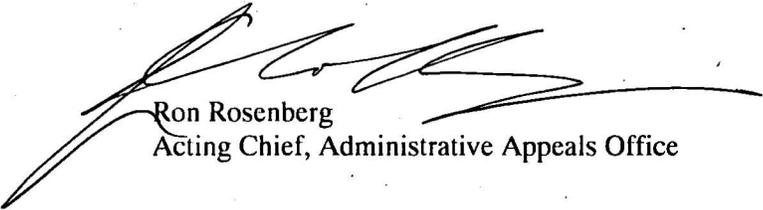


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 its 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 motion 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 any motion to 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 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 resided with his wife and entered into the marriage in good faith. The director also denied the petition for failure to establish that the petitioner’s wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner, through 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:

(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.

* * *

(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.

* * *

(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.

* * *

(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 Cote d'Ivoire who entered the United States on October 29, 2001 as a visitor. The petitioner married A-N-¹, a U.S. citizen, in ██████████ Pennsylvania on September 17, ██████████. The petitioner filed the instant Form I-360 on December 22, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's joint residency with A-N-, evidence of abuse, and good-faith entry into the marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

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 on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Joint Residence

The director correctly determined that the record failed to demonstrate that the petitioner resided with A-N-. The petitioner did not state on his Form I-360 the dates he resided with A-N-. The record contains the following: the petitioner's affidavits; letters from friends ██████████ and ██████████ photographs of the petitioner and A-N- on various, unidentified occasions; notices from the U.S. Citizenship and Immigration Services (USCIS) to the petitioner; a letter from the Social Security Administration (SSA) addressed to A-N-; a letter from the SSA addressed to the petitioner; and a list of magazine subscriptions the petitioner claimed he received at the joint address.

The letters from the SSA and USCIS individually addressed to the petitioner or A-N- show that mail was received by them at those addresses but do not indicate a shared residence. The list of magazine accounts was compiled by the petitioner and there is no evidence that the magazines were ever delivered to the petitioner and A-N- at their shared address. The photographs show that the petitioner and A-N- were together on several different occasions but are also not indicative of a shared residence. As such the evidence submitted carries insufficient evidentiary weight to establish joint residence.

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). In his first affidavit, the petitioner stated that after their marriage, the petitioner moved in with A-N- and her two young children. He did not describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to

¹ Name withheld to protect individual's identity.

demonstrate that he resided with A-N- after their marriage. In his second affidavit submitted in response to the RFE, the petitioner stated that he resided with A-N- from September 24, 2007 to August 30, 2009 when she told him to leave their marital residence. He stated that at first they lived on [REDACTED] until the beginning of May 2009 when they moved into an apartment located on [REDACTED]. He stated that the lease for the [REDACTED] apartment was only in A-N-'s name because the petitioner could not submit to a credit check required by the landlord. He further explained that when A-N- wanted him to leave, she locked him out of the house and he no longer had access to any documents to show that they resided together. He did not provide any details regarding their home, shared belongings, and residential routines. The letters from [REDACTED] and [REDACTED] are brief and do not describe either of the petitioner's claimed joint residences with A-N- in any probative detail.

On appeal, counsel asserts that the petitioner's lack of evidence establishing his joint residence with A-N- is directly related to the abuse she inflicted on the petitioner. Counsel argues that the director failed to take into consideration the petitioner's reasonable explanation within the "totality of the circumstances presented in this situation." On appeal, the petitioner submits the following: copies of rent payments from November of 2011 to February of 2012; a check to [REDACTED] dated December 16, 2011; a [REDACTED] statement with a February 2012 due date; copies of various grocery receipts dated in February and March of 2012; a textbook invoice dated December 1, 2011, copies of train stubs from February and March of 2012; a copy of the petitioner's temporary identification card issued on September 2, 2009 showing his [REDACTED] address; and a letter from friend [REDACTED]. With the exception of the petitioner's temporary identification card, all of the documents submitted on appeal are dated after the petitioner separated from his wife, are solely addressed to him, and were not sent to either of the two listed shared addresses. Therefore this evidence is insufficient to establish that the petitioner jointly resided with A-N-. Further, the temporary identification card was issued a couple of days after the petitioner stated that he no longer resided with A-N- and shows the [REDACTED] address which he claimed to have left in May 2009. Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The director also correctly determined that the petitioner failed to establish that he married A-N- in good faith. The record contains the petitioner's affidavits, letters from friends [REDACTED] and [REDACTED] and photographs of various occasions. In his first affidavit, the petitioner stated that he met A-N- at a restaurant, asked for her telephone number, and they began dating. He stated that they dated for 10 months before getting married but that the relationship had become serious five months after they started dating. The petitioner stated that they had a small ceremony because he was not working at the time. He did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the alleged abuse. In his second affidavit, the petitioner explained the lack of evidence documenting his residence with A-N- but did not further describe their courtship, engagement, wedding, joint residence or shared marital experiences apart from the alleged abuse.

[REDACTED] stated that he attended the petitioner's and A-N-'s wedding and saw them regularly as a couple at family events and holidays. He stated that he helped the petitioner move in with A-N-

after their marriage. [REDACTED] stated that he witnessed the petitioner's marriage to A-N- and that the petitioner was very happy. Neither of the petitioner's friends described any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship. The photographs alone do not establish the petitioner's good-faith intent upon marrying A-N-.

On appeal, the petitioner submits a letter from friend [REDACTED]. [REDACTED] states that he gave rides to the petitioner and A-N- and visited them at their home. He does not describe any particular visit in detail or otherwise explain the basis for his knowledge of the relationship. 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

We further find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the brief and evidence submitted on appeal fail to overcome this ground for denial. The record contains the petitioner's affidavit, letters from his friends, a letter from the petitioner's psychotherapist, [REDACTED] and photographs of his arms showing markings or scars that he claims resulted from A-N-'s abuse. In his first affidavit, the petitioner indicated that he and A-N- began having problems five months into their marriage. He stated that she became verbally abusive, repeatedly threatened to have him deported and began staying out all night. He stated that when he confronted her, A-N- slapped him and threw her daughter's toys at him. He stated that on one occasion, a toy she threw at him cut his arms drawing blood. Apart from this incident, the petitioner did not cite to specific examples or incidents of abuse. In his second affidavit, he stated that he used to have a "good sense" of his self-worth but that due to the "physical abuse and extreme cruelty" that he suffered at the hands of A-N-, he became anxious and depressed. He did not provide any probative details regarding specific incidents of the alleged abuse. The petitioner's statements do not demonstrate that his wife's behavior 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).

The letters from the petitioner's friends also failed to establish that the petitioner was subjected to abuse or extreme cruelty by A-N-. [REDACTED] stated that the petitioner told him that A-N- had an explosive temper and was abusive. [REDACTED] stated that he lost contact with the petitioner and that after they reconnected, the petitioner told him that A-N- was abusive. [REDACTED] stated that the petitioner asked him to store the petitioner's pictures on his computer because the petitioner was afraid that A-N- would destroy them. The petitioner's friends do not describe specific incidents of abuse or otherwise establish their knowledge of such abuse. Further, the letter from [REDACTED] briefly summarized what the petitioner recounted to her and provided no further, substantive information regarding A-N-'s treatment of the petitioner. Likewise, the photograph also failed to establish that the petitioner was battered by A-N-. The photograph only shows portions of an individual's arms. It does not show the individual's face or otherwise identify the pictured individual as the petitioner. There is also no indication from the photograph alone that the scars resulted from wounds inflicted on him by A-N- as claimed and no other evidence regarding this incident was submitted.

On appeal, the petitioner submits a psychological evaluation from Dr. [REDACTED] Masters of Social Work (MSW) that also fails to establish that the petitioner was subjected to battery or extreme cruelty. Dr. [REDACTED] states that the petitioner's account of events is credible and that A-N's behavior as described by the petitioner constitutes emotional and psychological abuse. While we do not question Dr. [REDACTED] or Ms. [REDACTED] expertise, their assessments are based on the petitioner's account of his wife's behavior, which, as previously discussed, is insufficient to establish battery or extreme cruelty. Dr. [REDACTED] and Ms. [REDACTED] provided no further, substantive information regarding the claimed abuse. When viewed in the aggregate, the relevant evidence in the record is insufficient to establish that A-N- 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 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.

ORDER: The appeal is dismissed.