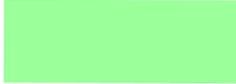


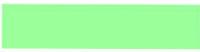


U.S. Citizenship
and Immigration
Services

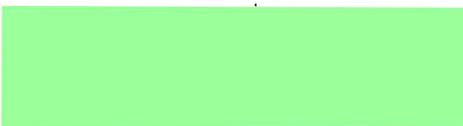
(b)(6)



Date: **FEB 04 2013** Office: VERMONT SERVICE CENTER File: 

IN RE: Self-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)

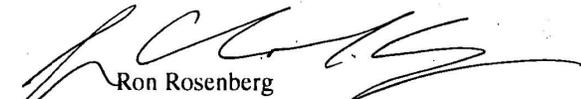
ON BEHALF OF PETITIONER:


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 our 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 request 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 that any motion must 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 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 that the petitioner entered into marriage with his wife in good faith.

On appeal, counsel submits a brief and additional evidence.

Applicable Law

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.

* * *

(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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of India who entered the United States on April 27, 2004, as a nonimmigrant worker. The petitioner married a U.S. citizen on May 5, 2006, in New Jersey. The petitioner filed the instant Form I-360 on August 2, 2010. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's 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 on September 12, 2011, and the petitioner timely appealed.

On appeal, counsel summarizes the evidence and asserts that United States Citizenship and Immigration Services (USCIS) failed to consider the lease, information about the petitioner's wife's business account, and a missing persons report listing the petitioner's address.

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. The petitioner's claims and the evidence submitted on appeal do not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit, dated July 27, 2011, the petitioner stated that he met his wife when she came in to his workplace and they began talking and exchanged telephone numbers. The petitioner reported that after his mother died in February of 2006, he became very close to his wife, and that they would go out to eat, to movies, and shopping. The petitioner recalled that his wife cooked his favorite dishes, and that they talked and introduced each other to family and friends. He stated that he decided to marry her and they got married with his friend and her son as witnesses. After the ceremony they went to a restaurant in New York. The petitioner did not further describe their courtship, engagement, wedding, or any of their shared experiences, apart from the abuse.

The petitioner submitted letters from three friends and from his sister. These letters provided no specific information demonstrating that the petitioner married his wife in good faith. [REDACTED] stated that the petitioner's marriage "was bona fide" but did not provide any basis for that opinion. Similarly, the petitioner's sister stated that the petitioner "loved [his wife] very much," but does not describe her observations of the petitioner's interactions and relationship with his wife aside from the abuse. The petitioner submitted a psychosocial evaluation written by [REDACTED], a psychiatrist, in which the psychiatrist repeated, often verbatim, the petitioner's affidavit. In the evaluation, the psychiatrist described the hardship the petitioner would face upon removal and diagnosed him with Posttraumatic Stress Disorder. The psychiatrist provided no details or probative information regarding the petitioner's intentions in entering into his marriage.

The director also accurately assessed the other relevant documents submitted below. The petitioner submitted copies of bank statements for a business account addressed to his wife as sole proprietor at an address on [REDACTED] in [REDACTED]. These bank statements do not demonstrate that the petitioner shared a bank account with his wife or that they had joint or shared responsibility for the household finances. In addition, the statements are all dated after the petitioner claims to have separated from his wife. The petitioner also submitted a copy of a missing person report that he filed concerning his wife, but again this is dated after the petitioner and his wife separated. The petitioner submitted tax forms showing he filed taxes jointly with his wife in 2008, but the address conflicts with the Form G-325A, Biographic Information Form, that he submitted with his Form I-485, Application to Adjust Status. His tax forms list his address in 2008 as being on [REDACTED] but according to his Form G-325A, he was living on [REDACTED] at that time. The copy of his 2006 tax return is not signed or complete, and there is no evidence the return was actually filed.

Regardless of these deficiencies, 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." 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the testimonial evidence submitted does not demonstrate the

(b)(6)

petitioner's entry into his marriage in good faith. In his affidavit, the petitioner does not describe his intentions in marrying his wife or their courtship, wedding, joint residence or any of their other shared experiences, apart from the abuse, in probative detail. The affidavits from the petitioner's sister and friends and the psychosocial evaluation do not discuss in probative detail the authors' observations of the petitioner's interactions with or feelings for his wife during their courtship or marriage. The relevant documents submitted are insufficient to show that the petitioner entered into the marriage in good faith.

On appeal, counsel submits a lease, bank documents, additional tax documents, an amended affidavit from the petitioner, and additional affidavits. The lease submitted is dated June 1, 2007 and is for the residence on [REDACTED]. However, according to the petitioner's Form G-325A, he was living on [REDACTED] during that time period. The bank documents submitted, which include the application for his wife's business account and account statements, are dated after the petitioner claims to have separated from his wife, as is the missing person report the petitioner filed. The addresses on the 2007 and 2008 tax transcripts conflict with other information in the record, and the 2006 tax transcript alone, which does not list an address, is insufficient to show that the petitioner entered into his marriage in good faith.

The petitioner's second affidavit provides more detail about the petitioner and his wife's courtship and wedding, but while the petitioner's affidavit on appeal states that his wife's witnesses at their wedding were her friend and her son, the letter from [REDACTED] states that the witnesses were the petitioner's wife's friend and her daughter-in-law. At his immigration interview, the petitioner incorrectly stated his wedding date as June 3, 2006. These inconsistencies diminish the petitioner's credibility. Furthermore, none of the other affidavits submitted on appeal describe the affiants' observations of the petitioner's interactions and relationship with his wife. The petitioner has failed to demonstrate that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

Beyond the director's decision,¹ the record also fails to demonstrate that the petitioner resided with his wife. In his affidavits, the petitioner does not describe their home or shared residential routines in any detail, apart from the abuse. The petitioner's friends and sister do not describe any visit to his and his wife's residence. The other relevant documents submitted were contradictory and insufficient to show joint residence. Where USCIS can articulate a material doubt regarding the petitioner's eligibility, the agency may either request additional evidence or deny the application if the material doubt indicates that the claim is probably not true. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). On the Form I-360, the petitioner stated that he lived with his wife from May 2006 until March 2009 and that their last shared address was on [REDACTED]. In his second affidavit submitted on appeal, the petitioner states that after their marriage on May 5, 2006, he began

¹ A 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).

living with his wife at a residence on [REDACTED]. However, in his initial declaration, the petitioner stated that after the marriage, he moved into his wife's home in [REDACTED] because she did not want to move to his residence in [REDACTED]. Other documents in the record present further inconsistencies in the petitioner's claim of joint residence with his wife. The petitioner submitted medical documents dated December 8, 15 and 16, 2007, listing his address on [REDACTED]. However, on his Form G-325A he stated that he did not live at the [REDACTED] address until February 2008. On the Form G-325A, he listed an address on [REDACTED] as his residence from May 2006 through February 2008. The petitioner also submitted medical documents dated July 7, 2007 that list his address as being on [REDACTED], but on his Form G-325A, the petitioner claimed to have stopped living at the [REDACTED] address in April 2006. There is no explanation offered for these discrepancies, and the various inconsistencies greatly diminish the petitioner's credibility. 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.

Conclusion

On appeal, the petitioner has failed to establish his good faith entry into the marriage with his wife. Beyond the director's decision, the petitioner has not established joint residence with his wife. 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. at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.