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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

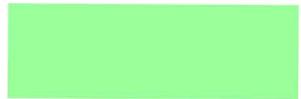


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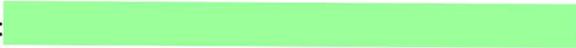
Office: VERMONT SERVICE CENTER

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 and the petition will remain denied.

The petitioner seeks immigrant classification under 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 a United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty, that he entered into his marriage in good faith, and that he is a person of good moral character. On appeal, counsel submits a letter 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 . . . 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. . . . 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:

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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Venezuela who entered the United States on December 3, 1994, as a nonimmigrant visitor. The petitioner married a U.S. citizen on February 14, 2004, in Pennsylvania. On September 17, 2008, his wife withdrew the petition for alien relative, (Form I-130), she originally filed on his behalf and U.S. Citizenship and Immigration Services (USCIS) denied the petitioner's application to adjust status (Form I-485). The petitioner was subsequently placed in removal proceedings and charged as an immigrant who remained in the United States for a time longer than permitted.¹

The petitioner filed the instant Form I-360 on December 23, 2010. The director subsequently issued several Requests for Evidence (RFE) of the petitioner's wife's battery or extreme cruelty, and the petitioner's good faith entry into the marriage and good moral character. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief statement in which he asserts that the director confused and misapplied the evidence and did not thoroughly review the documentation submitted.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

¹ The petitioner remains in proceedings before the Philadelphia, Pennsylvania Immigration Court and his next hearing is scheduled for May 7, 2013.

A full review of the record fails to fully establish the petitioner's eligibility. On appeal, the petitioner has established that he is a person of good moral character. The director's decision to the contrary will be withdrawn. However, the petitioner has failed to establish that he was subjected to battery or extreme cruelty by his wife during their marriage or that he entered into the marriage in good faith.

Good Moral Character

On appeal, the petitioner has established that he is a person of good moral character. Counsel submits local police and Federal Bureau of Investigation clearances, based both on fingerprints and name (including aliases), showing that the petitioner has no arrest record, as well as various letters of support that describe the petitioner as a moral person of integrity and responsibility. The petitioner has demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act, and the director's decision to the contrary will be withdrawn.

Battery or Extreme Cruelty

Nonetheless, the appeal cannot be sustained because the petitioner has not overcome the remaining grounds for denial. We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and counsel's assertions on appeal fail to overcome this ground for denial. In his affidavits, the petitioner stated that his wife publicly humiliated him, called him names and insulted him, and threatened to have him deported. The petitioner also reported that his wife insisted he sign over his shares in their business, but that he refused. When he refused, his wife threatened to sue him and to cancel her immigration petition on his behalf. The petitioner also stated generally that his wife called him at work and harassed him. The petitioner does not claim that his wife battered him. The petitioner's statements do not indicate 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 petitioner submitted an affidavit from [REDACTED] in which he states that the petitioner's wife was aggressive, demanding and violent. [REDACTED] recalled that on one occasion the petitioner's wife tried to get the petitioner to sign a document giving her his shares in their company, and when he refused, she cursed at him and threatened to call immigration. [REDACTED] description lacks probative detail and does not describe any specific behavior that would qualify as extreme cruelty. The petitioner also submitted an affidavit from [REDACTED] who stated that in 2008 she learned the petitioner's marriage was not going well and that he and his wife had separated, but did not mention any abuse or extreme cruelty.

The record also contains a letter from a psychotherapist from the [REDACTED] Mental Health Clinic that states that the petitioner has been diagnosed with and is being treated for "major [sic] depression disorder with psychotic features/generalized anxiety disorder." The psychotherapist makes no mention of the petitioner's wife or any abuse. Similarly, a letter from [REDACTED] certified

that the petitioner was receiving psychotherapy and treatment for major depressive disorder with psychotic features and generalized anxiety disorder, but made no mention of the petitioner's wife or any abuse. The director correctly concluded that the relevant evidence submitted below did not establish that the petitioner's wife subjected him to battery or extreme cruelty.

On appeal, counsel submits a Psychiatric Initial Evaluation form in which the psychiatrist reported that according to the petitioner, his wife verbally and emotionally abused him which resulted in various symptoms and the petitioner stated he continued to be under a lot of stress because his wife harasses and threatens him and because he is facing deportation. The evaluation repeats some of the petitioner's claims but does not discuss any particular incidents of abuse in probative detail. The evaluation also lists a diagnosis of major depressive disorder, Post Traumatic Stress Disorder, and panic disorder, but does not opine as to any causative factors of these conditions. While we do not question the psychiatrist's expertise as a mental health counselor, the brief notes on the intake form provide no additional, substantive information regarding any particular incidents of extreme cruelty.

In his appeal brief, counsel asserts that the petitioner submitted sufficient credible evidence to substantiate his claims of abuse. Counsel fails to articulate, however, how the relevant evidence demonstrates that the specific behaviors of the petitioner's wife 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.

Entry into the Marriage in Good Faith

The relevant evidence submitted below fails to demonstrate the petitioner's entry into his marriage in good faith. In his first declaration, the petitioner stated that he and his wife married on February 14, 2004 and that they did not file an immigration petition until two years later. The petitioner submitted a second declaration in which he added that he and his wife met at their work place and became friends. He stated that he and his wife shared a long commute and that they decided to get married. The petitioner related that the first three years of their marriage was good and that they were happy although they were unable to have children. The petitioner did not further describe how he met his wife, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the claimed abuse.

The petitioner submitted affidavits from friends who briefly stated that they were aware of the petitioner's marriage, but spoke predominately of the claimed abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. In his affidavit, [REDACTED] briefly mentioned that the petitioner and his wife married on February 14, 2004, that he invited them to visit him for a week, and that they are a happy and healthy couple. [REDACTED] stated that she knew the petitioner and his wife and that they developed a friendship that later grew to a love relationship. She indicated that she kept in contact with the petitioner and his wife through the telephone and that she was informed that after 2008 they separated. [REDACTED] did not

provide any substantive information regarding their observations of the petitioner's interactions and relationship with his wife prior to and during their marriage. [REDACTED] stated that the petitioner was married to his wife, but mentioned only the alleged abuse and did not provide any information on the petitioner's intentions in entering into his marriage. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married his wife in good faith.

The director also accurately assessed the relevant documents submitted below. The petitioner initially submitted documentation regarding the business he owned with his wife, but this evidence does not shed any light on their personal relationship or the petitioner's intention in entering into their marriage. He submitted copies of credit cards and bank statements that lacked sufficient information to show shared marital assets or payment for rent, utilities, or other shared living expenses. The photographs of the petitioner with his wife on a few unspecified occasions were not accompanied by any explanation of their significance. The petitioner also submitted insurance information showing that he was covered by his wife's health plan.

In the August 19, 2011 RFE, the petitioner was notified of a sworn statement dated March 7, 2007 in which [REDACTED] indicated that he was in a relationship with and residing with the petitioner during the time he claims to have been married to and residing with his wife. 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). In response to the RFE, the petitioner included an affidavit in which he asserted that his relationship with [REDACTED] was over prior to his relationship with his wife, but provided no further explanation to rebut [REDACTED] sworn statement.

On appeal, the petitioner submits Capital One credit card statements and previously submitted photographs. The Capital One statements are addressed only to the petitioner. While he also included a letter from Capital One stating that his wife is an authorized user on the account, there is no indication of the timeframe in which his wife was or is an authorized user, and the letter is dated several years after the petitioner and his wife's separation. Though the petitioner submits photographs with captions, these are insufficient to overcome the above-noted inconsistency.

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(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(c)(2)(vii). In this case, however, the testimonial evidence submitted does not demonstrate the petitioner's entry into his marriage in good faith. In his affidavits, the petitioner briefly describes meeting his wife and states that they were married, but does not describe their courtship, wedding, joint residence or any of their other shared experiences, apart from the alleged abuse. The petitioner also failed to sufficiently rebut evidence that he was in another

intimate relationship at the time of his marriage. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for his wife during their courtship or marriage. Accordingly, 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.

Conclusion

On appeal, the petitioner has demonstrated his good moral character, but has not established that his wife subjected him to battery or extreme cruelty during their marriage or that he entered into the marriage in good faith. 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 at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.