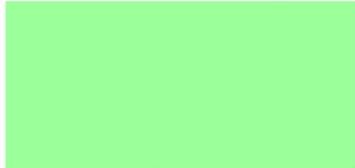




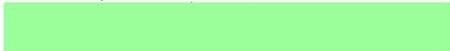
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JAN 03 2013

Office: VERMONT SERVICE CENTER File: 

IN RE: 

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:

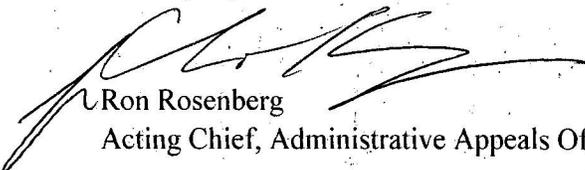


INSTRUCTIONS:

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, (“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 under section 204(a)(1)(A)(iii) of 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 failed to demonstrate the existence of a qualifying relationship with a citizen of the United States and his corresponding eligibility for immediate relative classification on the basis of such a relationship because the petition was filed more than two years after he and his former spouse divorced. The director also determined that the petitioner had not entered the marriage in good faith, had not resided with his former wife, and that she had not subjected him to battery or extreme cruelty during the 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). An individual who is no longer married to a citizen of the United States remains eligible to self-petition under these provisions if he or she is an alien: “who was a bona fide spouse of a United States citizen within the past 2 years and . . . who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. . . .” Section 204(a)(1)(A)(iii)(II)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa).

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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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 India who first entered the United States on October 31, 1996 as a B-2 nonimmigrant visitor. He married [REDACTED]¹, a citizen of the United States, on January 6, 1998 in New York City and they were divorced on January 25, 2007. The petitioner filed the instant Form I-360 on December 6, 2010. The director denied the petition and the petitioner timely appealed.

The AAO reviews these matters on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition. The appeal will be dismissed for the following reasons.

Joint Residence

The petitioner failed to establish that he resided with [REDACTED] during their marriage. The petitioner stated on the Form I-360 that he resided with [REDACTED] from January of 1998 to May of 2005. The

¹ Name is withheld to protect the individual's identity.

relevant evidence in the record contains the petitioner's affidavit, copies of identification cards for the petitioner and [REDACTED] a joint lease, a 2003 Internal Revenue Service (IRS) federal income tax return showing the filing status as "married filing jointly," and an affidavit from [REDACTED]. The identification cards were issued before the petitioner and [REDACTED] were married and show two different addresses from the claimed shared residence. Therefore they do not establish joint residence. The federal income tax return shows a different address from the one listed on the Form I-360 and there is no evidence that the tax return was actually filed. The lease alone is insufficient to establish that the petitioner resided with [REDACTED] during their marriage. *De novo* review of all of the relevant evidence submitted below does not establish that the petitioner jointly resided with his former wife.

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 affidavit, the petitioner did not describe his shared residence with [REDACTED] in any probative detail. He did not, for example, describe their apartment, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with [REDACTED] after their marriage. Further, there are discrepancies of where and when the petitioner claimed to have resided with [REDACTED]. The petitioner stated that after their marriage ceremony, he lived with [REDACTED] at their shared residence on [REDACTED] New York until their marriage "broke up" in August of 2005. In the same affidavit he also stated that at two parties in December of 2000 and June of 2001, [REDACTED] fought with him at his home on [REDACTED] New York. A review of the administrative record shows that the petitioner and [REDACTED] listed the [REDACTED] address on their Form G-325A Biographic Information sheets as their shared address from January 1998 to November of 2003. The petitioner's friend, [REDACTED] mentioned the 121st Street address in his affidavit and attending a party there but he did not provide any additional details regarding the marital residence. On appeal, the petitioner fails to resolve these inconsistencies and introduces yet another discrepancy to the record. The petitioner resubmits the documents submitted below and also submits a 2003 IRS payment voucher which lists a [REDACTED] residence as the petitioner's and [REDACTED]'s joint address and an affidavit from [REDACTED] attesting that the petitioner and [REDACTED] lived with him from January 2003 to March of 2004 at his [REDACTED] address. This is inconsistent with the petitioner's testimony that he resided with [REDACTED] from 1998 to 2005. The petitioner also submits two letters from utility companies addressed to Mr. [REDACTED]. The utility letters are not addressed to the petitioner or his former wife and do not indicate that the two jointly resided at the [REDACTED] address. The petitioner failed to explain these discrepancies and when viewed in the aggregate, the record does not demonstrate that the petitioner resided with [REDACTED] during their marriage. Accordingly, the petitioner's testimony and the testimony submitted on his behalf are insufficient to establish by a preponderance of the evidence that the petitioner resided with his former wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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. The record contains the petitioner's affidavit, wedding photographs, affidavits

from friends [REDACTED], a joint lease, and a 2003 IRS federal income tax return. In the petitioner's affidavit, he stated that he met [REDACTED] at a gas station where he was working. He gave a list of times and locations of their dates and then stated that he proposed to [REDACTED] on Christmas day. The two were married the following month. The petitioner did not further describe how he met his former wife, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. The letters of the petitioner's friends submitted below and on appeal also did not contain probative information regarding the petitioner's intentions in marrying [REDACTED]. Mr. [REDACTED] attested to knowing the petitioner and [REDACTED] as a married couple but did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing his personal knowledge of the relationship. Mr. [REDACTED] briefly states on appeal that the petitioner and [REDACTED] resided with him but does not further give probative details about the petitioner's intentions upon marrying [REDACTED]. The wedding photographs alone are insufficient to establish the petitioner's good-faith intent.

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). In this case, the petitioner's affidavit and the evidence submitted below and on appeal do not provide sufficient detail to adequately address his good faith intent upon marrying [REDACTED]. The letters from friends also failed to provide relevant, substantive information and did not show that the authors had any personal 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 former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

On appeal, counsel incorrectly argues that the approval of the Form I-130 Petition for Alien Relative filed by the petitioner's former wife on his behalf is *res judicata* of the petitioner's good-faith marriage. Although similar, the parties, statutory provisions and benefits procured through sections 201(b)(2)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. The petitioner's former wife was the petitioner and bore the burden of proof in the prior Form I-130 adjudication, in which she was required to establish her citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also his own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The regulations for self-petitions under section 204(a)(1)(A)(iii) of the Act further explicate the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii).

The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. See *INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition might not standing alone prove by a preponderance of

the evidence that the marriage was bona fide and not entered into to evade immigration laws.”). Accordingly, even if applicable in these proceedings, the principle of *res judicata* does not bar an examination of the petitioner’s good-faith entry into his marriage or relieve the petitioner of his burden to establish this statutory requirement in the instant case. In this case, the petitioner provided only a cursory description of his marriage and the remaining, relevant evidence lacks probative information sufficient to meet his burden of proof.

Battery or Extreme Cruelty

The petitioner failed to establish that [REDACTED] subjected him to battery or extreme cruelty and the evidence submitted below and on appeal fails to overcome this ground for denial. The relevant record contains the petitioner’s affidavit, a letter from Dr. [REDACTED], Ph.D., a prescription for an anti-depressant, and an affidavit from [REDACTED]. In his affidavit, the petitioner stated that [REDACTED] was verbally abusive, called him names, and kicked him. He stated that these incidents made him “depressed and mentally upset.” In his affidavit, Mr. [REDACTED] repeated much of what the petitioner stated and did not add further probative details regarding the claimed abuse. The letter from Dr. [REDACTED] also fails to establish that the petitioner was subjected to battery or extreme cruelty. Dr. [REDACTED] stated that the petitioner is a psychotherapy patient of his and that the petitioner is currently taking the anti-depressant Lexapro. He did not state a cause for the petitioner’s depression or a link to the claimed abuse. The medicine prescription shows the petitioner was prescribed Lexapro but also does not show a link between his condition and any domestic violence. On appeal, the petitioner submits a second letter from Dr. [REDACTED] who again briefly states that the petitioner is his patient and is being treated for depression. While we do not question the professional expertise of Dr. [REDACTED] his letters are very brief and do not provide any further, substantive information to demonstrate that the petitioner’s depression is a result of actions constituting battery or extreme cruelty by [REDACTED] as defined at 8 C.F.R. § 204.2(c)(1)(vi). Probative details of abuse are missing in both Dr. [REDACTED] letters as well as the petitioner’s statement. Accordingly, the petitioner has not established that his former 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.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director denied the petition for failure to establish that the petitioner had a qualifying relationship with a U.S. citizen spouse and was eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. The instant petition was filed more than two years after the petitioner and [REDACTED] divorced. The petitioner consequently had no qualifying relationship with [REDACTED] under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and is ineligible for immediate relative classification based on such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Counsel argues on appeal that the two-year post-divorce filing deadline is a statute of limitations subject to equitable tolling. However, he cites no binding authority in support of his argument. Section 204(a)(1) of the Act allows a former spouse to file a self-petition for up to two years of filing the petition and there is no exception to this rule. Although courts have found certain filing deadlines to be

statutes of limitations subject to equitable tolling in the context of removal or deportation, the petitioner cites no case finding visa petition filing deadlines subject to equitable tolling. *Compare Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9th Cir. 2005) (time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling) *with Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048-50 (9th Cir. 2008) (deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling).

Conclusion

The petitioner has therefore failed to overcome the director's grounds for denial of this petition. As he failed to file the petition within two years of the legal termination of his marriage to [REDACTED], the petitioner has not demonstrated the qualifying relationship and corresponding eligibility for immediate relative classification, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) 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). He has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.