



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 24 2013

Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

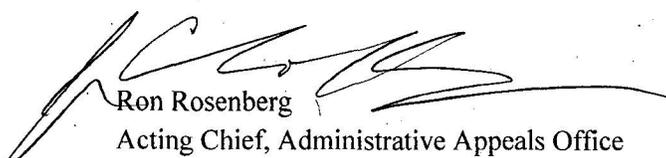
ON BEHALF OF PETITIONER:
[REDACTED]

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. 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 former wife in good faith. On appeal, the petitioner, through counsel, submits a brief.

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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien 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)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

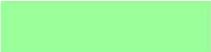
Section 204(a)(1)(J) of the Act states, in pertinent part:

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

* * *

(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 Guyana who claims he entered the United States from Canada as a visitor on April 20, 2000. The petitioner married [REDACTED]¹, a U.S. citizen, on March 30, 2007 and they divorced on September 2, 2009. The petitioner filed the instant Form I-360 on December 9, 2010. The director subsequently issued two Requests for Evidence (RFE) of, *inter alia*, the petitioner's entry into marriage with his former wife in good faith. The petitioner timely responded with additional evidence which the director found insufficient to demonstrate the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Good-Faith Entry into Marriage

The record fails to demonstrate that the petitioner married [REDACTED] in good faith. Counsel argues that the director failed to give sufficient weight to the documentation that was submitted. The relevant evidence in the record contains two self-affidavits, several Sovereign Bank statements issued to both the petitioner and [REDACTED], photographs of the wedding and of various unidentified occasions, and affidavits from the petitioner's sister, [REDACTED] and friends, [REDACTED]. We find that the director properly reviewed the record and addressed its deficiencies. The bank statements show minimal activity and do not demonstrate an intent to commingle finances or indicate that the petitioner and [REDACTED] used it for shared financial interests. Likewise, the photographs show that the petitioner and [REDACTED] were photographed together at their wedding and on various, unidentified occasions but are also insufficient to establish that the

¹ Name withheld to protect the individual's identity.

Page 4

petitioner married [REDACTED] in good faith.

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 affidavits do not demonstrate the petitioner's entry into his marriage in good faith. In his affidavit, the petitioner stated that he met his former wife in the summer of 2006, they fell in love and he married [REDACTED] in March 2007 because he loved her and thought that she was the one with whom he could share his life. He then explained why he lacked joint documentation to evidence his good-faith marriage with [REDACTED]. He did not further describe their courtship, engagement, wedding, joint residence or shared marital experiences apart from the abuse.

The letters of the petitioner's sister and friends also do not contain probative information regarding the petitioner's intentions in marrying [REDACTED] Ms. [REDACTED] and Mr. [REDACTED] submitted nearly identical affidavits in which they stated that they spent a lot of time with the petitioner and [REDACTED] and firmly believed that theirs was a genuine marriage. Mr. [REDACTED] stated that he spent time with the petitioner and [REDACTED] - as a couple and knew that the petitioner was committed to [REDACTED] stated that he attended the petitioner and [REDACTED]'s wedding and visited them frequently. He attested to the love that the petitioner had for [REDACTED] - and stated that they had intended to spend the rest of their lives together. The affidavits from the petitioner's sister and friends submitted below failed to establish the petitioner's good-faith intent upon marrying [REDACTED] - as they did not contain probative information regarding the petitioner's intentions in marrying [REDACTED] -. The petitioner's sister and friends all attested to knowing the petitioner and his former wife as a married couple, but they did not describe any particular visit or social occasion in probative detail or otherwise provide substantive information establishing their personal knowledge of the relationship. The petitioner did not submit any additional evidence demonstrating his good-faith entry into the marriage with the instant appeal. 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.

Conclusion

On appeal, the petitioner has failed to overcome the director's determination that he did not establish the requisite entry 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, 375 (AAO 2010). Here, that burden has not been met. The appeal will be dismissed.

ORDER: The appeal is dismissed.