

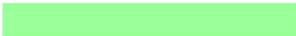


U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 24 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)

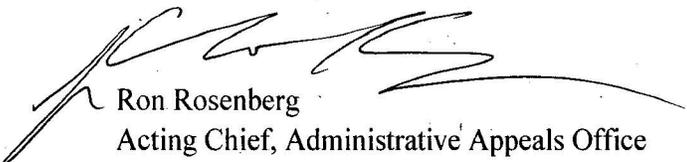
ON BEHALF OF PETITIONER:

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 with the field office or service center that originally decided your case by filing a 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 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 and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel reasserts the petitioner’s eligibility and submits 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.

* * *

(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.

* * *

(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 Mexico who states that he last entered the United States in 2008 without inspection. The petitioner married [REDACTED] a U.S. citizen, in New Jersey on June 27, 2009. The petitioner filed the instant Form I-360 on March 10, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage and his wife's battery or extreme cruelty. 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.

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. Counsel's claims and the evidence submitted on appeal do not overcome all of the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal demonstrates the petitioner's entry into his marriage in good faith. The petitioner initially submitted: copies of 2009 and 2010 tax returns prepared for him and his wife as married filing jointly; and a bank statement reflecting that he and his wife had a joint checking account in January 2011. In response to the RFE, the petitioner submitted: additional bank statements reflecting joint checking and saving accounts for the periods of October 2008 through March 2009 and June 2010 through November 2010; copies of his and his wife's debit cards; a November 25, 2008 affidavit from his landlord attesting to his and his wife's joint residence; 34 photographs of himself and his wife; a self-affidavit, dated January 9, 2012; and affidavits from two of the petitioner's friends,

a witness to the petitioner's marriage, provided detailed, credible testimony of her observations of the petitioner's marital relationship with his wife through frequent visits to the couple's residence and other social interactions. also provided a probative account of his observations of the petitioner's interactions with his wife during their courtship. The petitioner, however, did not discuss in his own affidavit how he met his wife, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

On appeal, the petitioner submits: transcripts from the Internal Revenue Service (IRS) reflecting that the petitioner and his wife jointly filed their 2009 and 2010 tax returns; a joint residential lease signed by the petitioner and his wife on October 1, 2008; two physician letters, respectively dated January 9, 2012 and March 30, 2012, confirming the petitioner's wife's pregnancy; and a second affidavit from the petitioner.

In his second affidavit, dated May 17, 2012, the petitioner provides a probative, detailed and credible account of how he first met his wife, their courtship, joint residence and shared experiences. The petitioner recalled that he and his wife met in March 2008 at a restaurant where they both worked. He stated that they resided together and then decided to get married in June 2009. The petitioner explained that they paid their landlord, who is also his father-in-law, rent and the utility bills were under his father-in-law's name. He recalled that in November 2009, his daughter from a prior relationship came to reside with him and his wife. The petitioner stated that he and his wife are still trying to make their marriage work and they learned in December 2011 that she is pregnant. He indicated that he continues to reside with her and he attends her prenatal appointments.

A full review of the relevant evidence submitted below and on appeal establishes that the petitioner married his spouse in good faith. The petitioner has submitted his own detailed, credible statement of

his good-faith entry into the marriage, evidence of jointly filed tax returns, a joint residential lease, bank statements reflecting joint accounts, numerous photographs of himself and his wife, and statements from his friends who have demonstrated their personal knowledge of the relationship. When viewed in the totality, the preponderance of the evidence demonstrates 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

Although the petitioner has now established his good-faith entry into marriage with his wife, we find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his initial affidavit, the petitioner stated that six months after their marriage, his wife became jealous when he interacted with female friends or customers. He recounted that his wife called him on the telephone every hour, accused him of infidelity, and she told him that he was "cheap." The petitioner stated that his wife pressured him to take a second job so that they could purchase a home and start a family. He recalled that he became depressed because of their arguments and moved into his friend's home in November 2010. The petitioner's initial statements do not indicate that his wife ever battered him or that her 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 a psychological evaluation, dated June 6, 2011, from [REDACTED], a licensed social worker. Ms. [REDACTED] reiterated the incidents the petitioner discussed in his initial affidavit. She opined that based on the petitioner's statements his wife was mentally, emotionally and financially abusive. Although the input of any mental health professional is respected and valuable, the petitioner's wife's accusations and name calling do not constitute battery or extreme cruelty as that term is defined in the regulations.

On appeal, counsel asserts that the emotional and psychological abuse described by the petitioner establishes an overall pattern of violence that constitutes extreme cruelty. Counsel, however, fails to explain how the incidents described by the petitioner constitute violence or threatened violence. On appeal, the petitioner submits another affidavit in which he recounts that his wife repeatedly accused him of infidelity and tried to pressure him to purchase a home and start a family with her. His affidavit, however, does not establish that his wife's behavior involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulations. 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

On appeal, the petitioner has established that he entered into marriage with his wife in good faith. However, he has failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.