



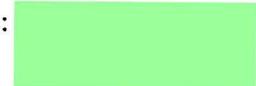
U.S. Citizenship
and Immigration
Services

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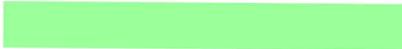


Date: JUN 03 2013

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 Vermont Service Center director (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 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 failed to establish that his wife subjected him to battery or extreme cruelty during their marriage and that he entered into the marriage in good faith. On appeal, counsel submits a brief and additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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, 8 U.S.C. § 1154(a)(1)(J) 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.

* * *

(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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Zambia who entered the United States on June 27, 2002, on a temporary religious worker visa. On June 15, 2007, he married a U.S. citizen in New York. The petitioner and his wife were divorced on February 10, 2011. The petitioner then filed the instant Form I-360 on July 18,

2011. The director subsequently issued a request for additional evidence (RFE) of the petitioner's wife's battery or extreme cruelty. The director found the petitioner's response to the RFE insufficient and denied the petition accordingly.

On appeal, counsel asserts that the evidence submitted below demonstrates that the petitioner's wife subjected him to battery and extreme cruelty during their marriage and that the United States Citizenship and Immigration Service (USCIS) erred by failing to issue a Notice of Intent to Deny (NOID) under 8 C.F.R. § 103.2(b)(16) and by failing to apply the "any credible relevant evidence" standard.

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 fails to demonstrate the petitioner's eligibility for the following reasons.

Entry into the Marriage in Good Faith

The director determined that the petitioner's evidence was insufficient to support a finding of his good-faith entry into the marriage. The director's decision cited to several perceived inconsistencies such as a suspect life insurance policy, a lack of bank account statements, and evidence suggesting the petitioner and his former wife resided at different addresses. In his original affidavit, dated June 16, 2011, the petitioner explained in detail how he first met his wife. The petitioner provided a probative account of their first date and subsequent period of courtship. The petitioner also discussed in probative detail his feelings for his wife, and described shared experiences after their wedding. The petitioner submitted several affidavits from friends and relatives that describe the petitioner and his ex-wife's relationship and discuss in detail their interactions with the petitioner and his ex-wife during their courtship and marriage. On appeal, the petitioner submits another affidavit, dated November 20, 2012, in which he credibly explains the discrepancies in his life insurance policy and the different addresses provided. The petitioner also submits various credit card statements showing activity.

De novo review of the record establishes that the petitioner married his spouse in good faith. When viewed in the totality, the preponderance of the relevant evidence submitted 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.¹

Battery or Extreme Cruelty

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 affidavit, the petitioner recounted that his wife threatened not to go to his immigration interview with

¹ In her brief on appeal, counsel asserts that USCIS erred in finding that the petitioner did not enter into the marriage in good faith without first issuing a NOID under 8 C.F.R. § 103.2(b)(16). Although the argument is moot as entry into the marriage in good faith has been established, we would note that where the initial filing does not establish eligibility, a NOID may be issued at the discretion of the agency per 8 CFR § 103.2(b)(8). The regulation cited to by counsel, however, 8 C.F.R. § 103.2(b)(16), only applies to derogatory evidence unknown to the petitioner. As the derogatory information in this case was submitted by the petitioner, USCIS would not have been required to issue a NOID prior to denying the petition.

him, called him names, cursed at him, broke things and threw things around and at the petitioner. He stated that his wife used drugs, locked him out of the house, spent his money, didn't sleep in the same bed as him, and would go out and not tell him where she was going. The petitioner reported that his wife slapped him in the face, had an abortion, and threatened him. In response to the RFE, the petitioner submitted a second affidavit, dated November 18, 2011, in which he repeated parts of his original affidavit, and added that his wife hit him, spit on him, punched him in the face and kicked him in the groin. The petitioner submitted affidavits from four relatives and friends who stated that the petitioner's wife cursed at him, called him names, didn't share a bed with him, and would lock him out of the house. In response to the RFE, the petitioner also submitted an affidavit from [REDACTED] who indicated that he saw the petitioner's wife punch him.

When considered in the aggregate, the relevant evidence fails to establish that the petitioner's wife subjected him to battery during their marriage. The petitioner's descriptions of battery are brief and lack probative details. Although [REDACTED] claims to have witnessed the petitioner's wife punching him, the petitioner himself does not describe this incident in any of the three affidavits he submitted. None of the other affidavits provided make any mention of any incident of battery.

Regarding extreme cruelty, the incidents mentioned by the petitioner and his affiants, including but not limited to, name calling and drug use by the petitioner's spouse, do not demonstrate that the petitioner's wife's behavior involved 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 also submitted a mental health evaluation written by [REDACTED], a licensed psychologist, who repeated the petitioner's claims and determined that the petitioner appears to have suffered from Major Depressive Disorder, though no clear diagnosis was made. The psychologist's report does not offer any probative descriptions of any particular incidents of battery or acts comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Similarly, in her letter, [REDACTED] notes that the petitioner came to her agency because his wife verbally abused him, threatened not to attend immigration interviews, and locked him out of the house, but she does not mention any incident of battery or provide any probative descriptions of any incidents of extreme cruelty.

The director found the relevant evidence submitted below insufficient to support the petitioner's claims of abuse. On appeal, counsel submits a letter from [REDACTED] a psychologist, and [REDACTED] a psychiatrist, and copies of medication labels prescribed to the petitioner. [REDACTED] and [REDACTED] note that the petitioner is seeing them for treatment of depressive symptoms, and that he is diagnosed with Major Depressive Disorder for which he has been prescribed medication. They do not, however, mention any particular incidents of battery or acts of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Counsel also asserts that the petitioner submitted sufficient credible evidence below to substantiate his claims of abuse. Although the director failed to elaborate on the petitioner's claims of verbal and physical abuse, and incorrectly suggested that the psychologist should be expected to have first-hand knowledge of the abuse, these oversights have not prejudiced the petitioner. The AAO has reviewed the psychologist's assessment, the petitioner's affidavits, and the other relevant evidence on appeal, and as explained above, the record is insufficient to show that the petitioner was subjected to battery or extreme cruelty by his wife. The petitioner's brief assertions that his wife threw things at him,

slapped, punched, and kicked him are not sufficient evidence of battery as his description lacks substantive details and is not supported by any other relevant, probative evidence. The other acts the petitioner describes are not comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), and there is no indication that the petitioner's wife's non-physical behavior was accompanied by coercive actions or was otherwise part of an overall pattern of violence. 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.

Qualifying Relationship

Beyond the director's decision,² the petitioner has failed to demonstrate that he had a qualifying relationship with a U.S. citizen and that he is eligible for immigrant relative classification based on such a qualifying relationship. As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Conclusion

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.

ORDER: The appeal is dismissed.

² An application or 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).