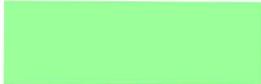




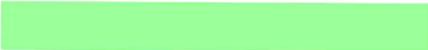
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: Office: VERMONT SERVICE CENTER FILE: 

JUN 03 2013

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:

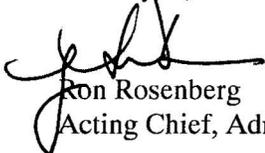


INSTRUCTIONS:

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 he entered into his marriage in good faith, that he is a person of good moral character, and that he qualified for the bona fide marriage exception pursuant to section 245(e)(3) of the Act. On appeal, counsel submits a letter and additional evidence.

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).

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 Brazil who entered the United States on March 20, 2005, without inspection, admission, or parole. On or about March 23, 2005, he was placed into removal proceedings and was ordered removed on May 23, 2005. The petitioner married a U.S. citizen on March 22, 2008, in Massachusetts. The petitioner filed the instant Form I-360 on March 22, 2012. The director subsequently issued several Requests for Evidence (RFE) of 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 she asserts that United States Citizenship and Immigration Services (USCIS) did not fully consider the evidence submitted, including evidence showing that the pending charges against the petitioner were dropped.

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 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 entered into the marriage in good faith or qualifies for the bona fide marriage exception. Furthermore, the petitioner has not shown that he was subjected to battery or extreme cruelty by his wife during their marriage.

Good Moral Character

On appeal, the petitioner has established that he is a person of good moral character under section 101(f) of the Act. Counsel submits the record of disposition showing that the assault charges that were pending against the petitioner were dismissed without prejudice. The petitioner also provided police clearances and 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.

Entry into the Marriage in Good Faith and Restriction on Petitions Based on Marriages Entered while in Proceedings

Because the petitioner married his wife after he was placed into removal proceedings and he did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. Section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien

establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

Upon a full review of the relevant evidence submitted below and on appeal, the petitioner has failed to establish his good-faith entry into his marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, and he has not provided clear and convincing evidence that his marriage is bona fide under the heightened standard of proof required by section 245(e)(3) of the Act. In his first affidavit, dated March 19, 2012, the petitioner stated that he met his wife after he responded to an ad looking for a roommate and moved into her apartment. He briefly recounted that he and his wife began to date, and some months after their other roommates moved out, they decided to get married. A Justice of the Peace came to their home to marry them, and some of their friends were invited. In a letter dated April 7, 2012, the petitioner added that after he moved into her apartment, his wife kissed him unexpectedly and they started going to the movies and to the mall together. He reported that they often took his wife's son with them. The petitioner stated that his wife was having

problems regaining custody of her son, so he agreed to marry her. The petitioner did not further describe their courtship, wedding or any of their shared experiences, apart from his wife's alleged abuse.

The petitioner submitted letters from a number of friends who discussed the petitioner's marriage, but most of the letters spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. In her affidavits, [REDACTED] stated that she felt that the petitioner and his wife's marriage was for love, and that he looked at his wife lovingly and was affectionate with her. In his letter, [REDACTED] briefly mentioned that the petitioner appeared to me a man who loved his wife. The director correctly concluded that these letters were insufficient to demonstrate that the petitioner married his wife in good faith.

Furthermore, the director accurately assessed the relevant documents submitted below. Much of the evidence submitted below, though it supports that the petitioner and his wife resided together, fails to establish the petitioner's intentions upon entering into the marriage. The loan documents and [REDACTED] statements are addressed individually to either the petitioner or his wife, and while they indicate that the two shared a residence, they do not show whether the petitioner entered into his marriage in good faith. The copy of the lease the petitioner submitted is for the apartment where he lived after he left his wife. The power of attorney letter, receipts for money orders, photographs and tax information are insufficient to meet the petitioner's burden of proof that he married his wife in good faith.

On appeal, counsel asserts on the Form I-290B, Notice of Appeal, that USCIS did not consider the evidence submitted and did not provide a sufficient explanation of why each piece of evidence was dismissed. Counsel, however, fails to specifically identify any error in the director's determination that the petitioner did not enter his marriage in good faith. Although the petitioner has submitted some documentary evidence, without any description of his intentions in marrying his wife, he has not shown by a preponderance of the evidence that he entered into his marriage in good faith. In his affidavit, the petitioner briefly states that he met his wife and that they married, but he does not describe their courtship, wedding, or any of their other shared experiences, apart from the alleged abuse, in probative detail. 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. As he failed to demonstrate his good-faith entry into his marriage by a preponderance of the evidence, he necessarily has not established his good-faith entry into the marriage under the heightened standard of clear and convincing evidence required by section 245(e)(3) of the Act.

Battery or Extreme Cruelty

Beyond the director's decision,¹ the petitioner has not demonstrated that his wife subjected him to battery or extreme cruelty. In his affidavit, the petitioner stated that his wife humiliated him in front of others, isolated him, and threatened to have him and his friends deported. The petitioner also reported that his wife threatened to take away his van, and eventually made him give her his apartment in Brazil. 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 several letters from friends. [REDACTED] reported that the petitioner's wife screamed at him and threatened to have him and his friends deported. [REDACTED] stated that the petitioner's wife made him cancel a job with her and that she threatened to "call immigration." [REDACTED] also reported that the petitioner's wife threatened to "call immigration on him." These letters do not mention any incident of battery and do not describe behavior that constitutes extreme cruelty.

The record also contains an evaluation written by [REDACTED] a clinical psychologist, who reported that the petitioner's wife yelled at him and threatened to have him and his friends deported. [REDACTED] also noted that the petitioner had suffered from a major depressive episode. [REDACTED] did not contend that the petitioner's wife battered him, and she does not describe any events or actions that constitute extreme cruelty. The letter from [REDACTED] an advocate from [REDACTED], noted that the petitioner received services from her agency, but did not provide any details about his case in particular. The letter offers no information that would establish that the petitioner was battered or subject to extreme cruelty by his wife. 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 is a person of good moral character. The petitioner has not, however, established that he entered into the marriage in good faith or that he meets the bona fide marriage exception under section 204(g) of the Act. Beyond the decision of the director, the petitioner has not established that his wife battered him or that she subjected him to 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

¹ A 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).

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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.