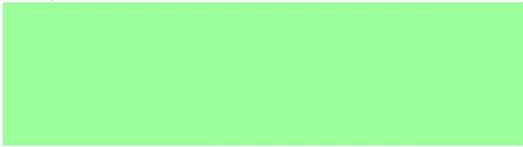




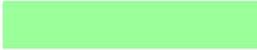
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 09 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:

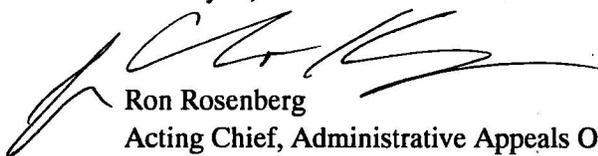


INSTRUCTIONS:

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. The AAO dismissed a subsequent appeal. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen and reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

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 is a person of good moral character, entered into marriage with his wife in good faith and that she subjected him to battery or extreme cruelty during their marriage. The AAO affirmed the director’s decision and dismissed a subsequent appeal. On motion, the petitioner, though counsel, reasserts his eligibility.

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.

(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. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. 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.

* * *

(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 Jamaica who was admitted to the United States on November 29, 2000, as a nonimmigrant visitor. The petitioner married F-E-¹, a U.S. citizen, on March 17, 2005 in Miami, Florida. The petitioner filed the instant Form I-360 on April 5, 2010. 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 dismissed the appeal and rejected counsel's subsequent, improperly-filed motion to reopen and reconsider. The petitioner, through counsel, has now filed a second motion to reopen and reconsider with the AAO, which satisfies the requirements and will be granted.

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. The decision to dismiss the appeal will be affirmed for the following reasons.

Entry into the Marriage in Good Faith

In its February 17, 2012 decision, the AAO determined that the relevant evidence failed to demonstrate the petitioner's entry into his marriage in good faith. In reaching this determination, the AAO found that the petitioner did not describe his wedding ceremony, joint residence with his wife or any of their shared experiences in probative detail, apart from the alleged abuse. The AAO noted that the petitioner's two statements offered differing accounts of the petitioner's wedding ceremony. The AAO stated that the petitioner's brother indicated in his declaration that he resided with the petitioner and his wife, but he did not discuss his observations of the petitioner's interactions with or feelings for his wife during his marriage. The AAO further noted that the psychological evaluation the petitioner submitted did not contain any probative information regarding the petitioner's good faith in marrying his spouse.

On motion, counsel asserts that the petitioner described shared experiences with his wife during their courtship and her subsequent abuse. Counsel contends that the petitioner's brother demonstrated his knowledge of the couple's shared residence. Counsel states that the psychological evaluation was prepared for the purposes of determining the petitioner's psychological condition, and was not issued to determine the bona fides of the marriage. Upon a full review of the record, we find no error in our prior decision. The petitioner failed to describe his wedding ceremony, joint residence and shared marital experiences with his wife in probative detail. On motion, counsel fails to provide an additional

¹ Name withheld to protect the individual's identity.

statement from the petitioner or any other evidence to establish the petitioner's good-faith entry into the 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.

Battery or Extreme Cruelty

In its February 17, 2012 decision, the AAO determined that the relevant evidence also failed to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The AAO found that the petitioner's statement did not indicate that his wife's behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, and his account of the alleged physical abuse was brief and lacked probative detail. The AAO stated that the psychological evaluation referenced incidents of abuse that the petitioner did not mention in his own statements and the brief account of the alleged abuse was not probative. The AAO noted that the petitioner's brother, who resided with the petitioner and his wife, did not claim to have personally observed any events that would constitute battery and/or extreme cruelty. The AAO further noted that the petitioner submitted medical records, but did not provide any evidence to connect his medical condition to the alleged abuse.

On motion, counsel reiterates the petitioner's statements of alleged abuse and contends that they meet the definition of battery and extreme cruelty as defined in the regulations. Counsel specifically discusses two instances of physical abuse the petitioner mentioned in his statement. As noted in our previous decision, the petitioner failed to provide probative details of the alleged instances of physical abuse. Counsel also contends that the petitioner's wife threatened him with violence and deportation. However, the petitioner has failed to offer probative, credible and detailed testimony of these alleged threats. In his declaration, the petitioner simply stated that his wife threatened to have her family members harm him and offered no other details. The petitioner also failed to probatively discuss the alleged threat of deportation, which he claims prevented him from contacting the police. The AAO in its prior decision also noted that the psychological evaluation the petitioner submitted briefly discussed incidents of abuse that the petitioner did not mention in his own statements. The petitioner has not submitted an additional statement with the motion offering probative details on the alleged instances of abuse or any other new, relevant evidence. 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.

Good Moral Character

In its February 17, 2012 decision, the AAO determined that the petitioner gave false testimony for the purpose of obtaining a benefit under the Act, which prevents a finding of his good moral character pursuant to section 101(f)(6), 8 U.S.C. § 1101(f)(6), of the Act. The AAO stated that during the petitioner's Form I-130 interview, he gave oral testimony that was inconsistent with the petitioner's written statements. The AAO found upon a full review of the record that the interview questions were clearly stated and the inconsistencies were not simply a misunderstanding on the part of the petitioner, but evidence of "a subjective intent to deceive" on his part to show a bona fide marriage for the approval of the alien relative petition filed on his behalf.

The record reflects that during the petitioner's June 5, 2008 interview in connection with the Alien Relative Petition (Form I-130) filed by F-E- on his behalf, the petitioner was placed under oath and testified that his wife had never been arrested and they never resided apart during their marriage. In his rebuttal to the Form I-130 Notice of Intent to Deny (NOID), the petitioner admitted to his oral testimony during the Form I-130 interview and stated, "[w]hen the officer asked me if my wife and I have ever been separated, lived apart, or slept outside the home since our marriage I said no because I did not understand the question. I thought the officer meant have we ever been separated because of a fuss or fight." The petitioner further explained, "[i]f I had understood the question, I would have answered 'yes' because my wife was arrested and spent four months in jail."

On motion, counsel refers to an unpublished federal district court decision and asserts that the AAO has not proven with probative evidence that the petitioner willfully attempted to withhold or misrepresent information with the intent to deceive for the purpose of obtaining an immigration benefit. However, that decision is not precedential, as the AAO is not bound to follow the published or unpublished decisions of United States district courts, even in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). As previously discussed, false testimony under section 101(f)(6) of the Act is limited to oral statements made under oath with the subjective intent of obtaining immigration benefits. *Kungys v. United States*, 485 U.S. 759, 780 (1988). The false testimony "appears to some degree whenever there is a subjective intent to deceive, no matter how immaterial the deception." *Id.* The false testimony need not be material and does not include misrepresentations made for reasons other than obtaining immigration benefits, such as statements made out of embarrassment, fear or a desire for privacy. *Id.*

Counsel asserts that there is no proof that the petitioner made misrepresentations for the purpose of obtaining an immigration benefit. Counsel states that the petitioner offered a reasonable explanation of having misunderstood the interview questions. De novo review of the record shows the petitioner's explanation of having misunderstood the interview question to be reasonable and we withdraw our previous finding that the petitioner provided false testimony under oath in order to gain an immigration benefit. Pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v), the petitioner submitted with the Form I-360 a police clearance from the Broward County, Florida Sheriff's Office Record Division reflecting that he does not have an arrest record. The record contains no other documentary evidence indicating that the petitioner lacks good moral character. The petitioner has therefore established that he is person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On motion, the petitioner has established that he is a person of good moral character. However, he has not established that he entered into marriage with his wife in good faith and that she 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.

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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.

ORDER: The AAO's decision, dated February 17, 2012, is affirmed. The appeal remains dismissed. The petition remains denied.