



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 14 2013**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

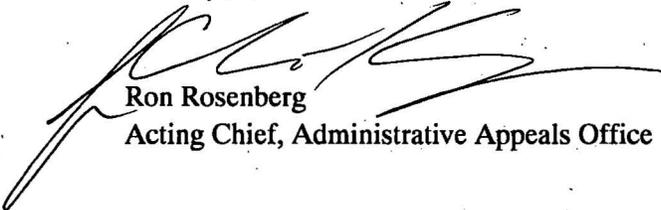
SELF-REPRESENTED

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.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.¹

The director denied the petition for failure to establish that the petitioner resided with his wife and entered into marriage with his wife in good faith.

On appeal, the petitioner submits additional evidence.

Applicable Law

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(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

¹ Although the petitioner claims that his wife is a U.S. citizen, he provided no evidence to demonstrate her citizenship, and U.S. Citizenship and Immigration Services (USCIS) records reflect that she is currently a lawful permanent resident who has not yet naturalized.

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)(B)(ii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 Jamaica who states that he entered the United States on November 1, 2001, as a nonimmigrant visitor. The petitioner married a lawful permanent resident of the United States on August 22, 2008, in New York. The petitioner filed the instant Form I-360 on March 3, 2011. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and shared residence. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

On appeal, the petitioner submits letters, account statements, a copy of his 2009 taxes, and pictures. 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. The petitioner's evidence submitted on appeal does not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his declaration, the petitioner recounted that he met his wife at his friend's restaurant and they exchanged telephone numbers. The petitioner stated that they dated for two years and after a brief separation, they were married. The petitioner did not further describe how he met his wife, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse, in probative detail.

The petitioner submitted letters from two friends who briefly mentioned that the petitioner was married, but provided no probative information regarding the petitioner's good faith in entering the relationship. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married his wife in good faith.

On appeal, the petitioner submits affidavits from three friends who state that they know the petitioner and recommend him as a person of good character, but only briefly mention that the petitioner is married and do not demonstrate that he entered into his marriage in good faith. The petitioner also submits copies of his 2009 federal and state income tax returns, but there is no evidence that these taxes were actually filed, and his filing status is listed as "single." Similarly, although he submits copies of bank account and telephone statements, these accounts are all solely in the petitioner's name and do not show that the petitioner married his wife in good faith. The photographs of the petitioner with his wife at their wedding are not accompanied by any description of the ceremony and are insufficient to establish the petitioner's intent at the time.

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. The relevant documents submitted are insufficient to show that the petitioner entered into the marriage in good faith. However, 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(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(c)(2)(vii). In this case, however, the testimonial evidence submitted does not demonstrate the petitioner's entry into his marriage in good faith. In his declaration, the petitioner does not describe his intentions in marrying his wife or their courtship, wedding, joint residence or any of their other shared experiences, apart from the abuse. 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 (apart from the abuse) or otherwise establish their personal knowledge of the relationship. 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)(B)(ii)(I)(aa) of the Act.

Joint Residence

The record also fails to demonstrate that the petitioner resided with his wife. On the Form I-360, the petitioner stated that he lived with his wife from June 2008 to December 2010 and that their last joint address was on [REDACTED], but he did not identify the state they resided in.

In his declaration, the petitioner does not describe their home(s) or shared residential routines in any detail, apart from the abuse. The petitioner's friends do not describe any visit to his and his wife's residence(s). Although dated during the time the petitioner stated he resided with his wife, the bank and telephone account statements are all in the petitioner's name individually and list an address which is different from the [REDACTED] address the petitioner identified as his last shared address with his wife. The petitioner did not identify the address listed on his bank and telephone account statements as a residence that he shared with his wife. Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that he did not establish the requisite entry into the marriage in good faith or joint residence with his wife. He is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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.