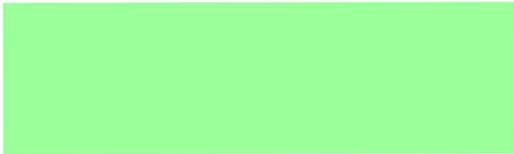


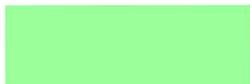


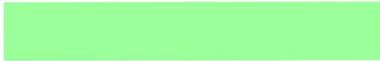
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 15 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:

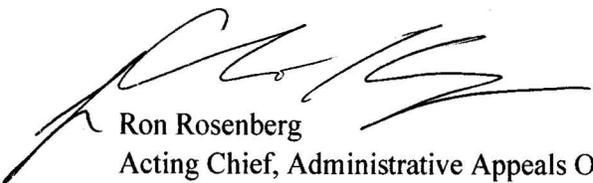


INSTRUCTIONS:

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 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 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 submits a brief.

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:

(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 India who entered the United States on October 1, 1999, as a nonimmigrant visitor. The petitioner married C-W-, a U.S. citizen, on June 2, 2008 in Towson, Maryland.¹ The petitioner filed the instant Form I-360 on March 11, 2011. The director subsequently issued two Requests for Evidence (RFEs) of, *inter alia*, the petitioner's good-faith entry into the marriage and his wife's battery or extreme cruelty. The petitioner timely responded with

¹ Name withheld to protect the individual's identity.

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 fails to establish the petitioner's eligibility. Counsel's claims do not overcome 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 fails to demonstrate the petitioner's entry into his marriage in good faith. In the petitioner's initial statement, he recounted that he first met C-W- in January 2008 while she was working at a restaurant his friend owned in Maryland. He stated that they started dating one month later and went out to eat at Indian restaurants. The petitioner recounted that he spent time with C-W-'s daughter from another relationship. He stated that he proposed to C-W- on her 21st birthday and they wed one week later at the Maryland courthouse. The petitioner briefly recounted that after their marriage they resided in an apartment in Baltimore and cooked, shopped and visited friends together. Although the petitioner described how he met his wife, their engagement and wedding ceremony, he failed to provide probative details of their joint residence and shared experiences, apart from the alleged abuse.

The petitioner submitted letters from his friends, and his sister, stated that he has known the petitioner since 2008, but he did not discuss the petitioner's courtship or marriage to C-W-. briefly attest to knowing of the petitioner and C-W- as a married couple, but they do not provide detailed information establishing their personal knowledge of the relationship. stated that she had knowledge of the petitioner's courtship with C-W- and attended their wedding ceremony. Although she stated that the petitioner and C-W- resided at her home for a month and a half after their marriage, she did not discuss her observations of the petitioner's interactions with or feelings for C-W- during this time period. In response to the first RFE, the petitioner submitted a letter from who stated that she provided child care to C-W-'s daughter. However, she did not discuss interacting with the petitioner and C-W- as a married couple.

The petitioner also submitted photographs of himself and C-W-, joint automobile insurance statements, and joint utility bills. The photographs reflect that the petitioner and C-W- were photographed together on several occasions. However, the automobile insurance statements and utility bills are dated after the couple's separation. In response to the second RFE, the petitioner submitted a 2008 tax return transcript from the Internal Revenue Service (IRS) and an automobile insurance policy for the five month period prior to the couple's separation. The IRS transcript reflects that the petitioner and C-W- jointly filed their 2008 tax return. The automobile insurance policy, however, reflects only the petitioner as the insured individual on the policy with C-W- added as a "driver."

On appeal, counsel asserts that the petitioner's affidavit, the affidavits of his family members and friends, the psychological evaluation from and "other evidence" establish that the petitioner entered into a good faith marriage. Counsel, however, fails to specifically identify how the

relevant evidence demonstrates the petitioner's good-faith entry into the marriage. Although the petitioner submitted photographs of himself and C-W- and evidence that they jointly filed one tax return, the petitioner's own statement fails to provide probative details of his joint residence and shared experiences with C-W-, apart from the alleged abuse. The psychological evaluation from Mr. [REDACTED] focuses on the alleged abuse in the marriage and only provides three brief sentences about the petitioner's courtship with C-W-. The petitioner submitted one letter from a family member, his sister, who only briefly attested to knowing of the petitioner's marriage to C-W-. The petitioner's friends do not discuss their observations of the petitioner's interactions with or feelings for his wife during their marriage, or otherwise demonstrate their personal knowledge of the marital relationship. The petitioner submitted no additional statements or other evidence on appeal. 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

The record also fails to establish that C-W- subjected the petitioner to battery or extreme cruelty during their marriage. In his initial statement, the petitioner recounted that C-W- had her friends who used drugs over at their home and she had an extramarital affair. He stated that on July 16, 2009 he and C-W- had an argument and she threw objects at him. The petitioner recounted that during the argument C-W- called the police and he was arrested and charged with domestic violence. The petitioner recounted that C-W- subsequently called him names, used drugs, sold his belongings, threatened deportation, and threatened that her friends would kill him. However, the petitioner's description of the alleged assault and threats against him lack probative details.

The letters from the petitioner's friends and sister also do not establish that he was subjected to battery or extreme cruelty. The petitioner's sister, [REDACTED] and his friend, [REDACTED] do not discuss the alleged abuse in the marriage. The petitioner's friends, [REDACTED] all attest to knowing of C-W-'s drug use, but they do not discuss any incidents of battery or extreme cruelty against the petitioner.

The petitioner submitted print-outs of the electronic case records for C-W-'s arrests for multiple counts of burglary, theft, possession of marijuana, possession with intent to distribute, open alcohol container and prostitution. Although the records show that the petitioner's spouse was arrested on several occasions for criminal activity, they do not indicate that the petitioner was the victim of any of the crimes.

The petitioner also submitted print-outs of electronic case records for his requests for domestic violence protection orders against C-W-. The case information reflects that on July 16, 2009, he was granted a one-month temporary protection order, but he was denied a final protection order for failing to appear at the hearing. It further shows that on December 5, 2009, the petitioner applied for a second domestic violence protection order, but the order was also denied after the court determined that there was no statutory basis for relief. In response to the second RFE, the petitioner submitted court certified final judgment orders for these cases. The orders reflect that first request for a protection order was dismissed because the petitioner failed to appear at the hearing and the second request for a protection order was denied because the petitioner could not meet his burden of proof.

In response to the first RFE, the petitioner submitted a criminal history report from the Maryland Criminal Justice Information System, which shows that on July 14, 2009 he was arrested by the Baltimore City Police Department for assault in the second degree. The report states that the charge against the petitioner was *nolle prosequi*, or not prosecuted. In response to the second RFE, the petitioner submitted the court disposition for this arrest. Although it was requested in the second RFE, the petitioner failed to submit the police report related to his arrest to shed light on the circumstances and the alleged victim of the offense.

In response to the second RFE, the petitioner submitted a psychological evaluation from [REDACTED] Mr. [REDACTED] reiterated the incidents the petitioner discussed in his statement. He diagnosed the petitioner with adjustment disorder, depression and anxiety. Although we are not questioning Mr. [REDACTED]'s expertise, the psychological evaluation does not offer any additional information regarding the alleged abuse to support the petitioner's statements.

On appeal, counsel asserts that the director minimized the petitioner's corroborating evidence and failed to consider the totality of the evidence. However, a full review of the relevant evidence fails to reveal any error in the director's determination. The petitioner's brief description of his wife's assault and threats are insufficient to demonstrate that her actions constituted battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The psychological evaluation does not offer any additional information of the alleged incidents to support the petitioner's statements. The director requested the petitioner to submit the police report related to his arrest for assault, but he failed to comply with this request. The two requests the petitioner made for protection orders against C-W were denied, first because he failed to appear for the hearing and second because he did not meet his burden of proof. The petitioner's friends also do not discuss having knowledge of any incidents of battery or extreme cruelty against the petitioner. The petitioner has submitted no other evidence on appeal. 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 failed to establish 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.

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.

ORDER: The appeal is dismissed.