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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

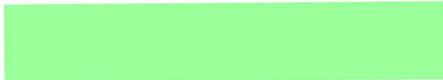


U.S. Citizenship
and Immigration
Services



Date: **MAY 24 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:

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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 has a qualifying relationship as the spouse of a U.S. citizen; he is eligible for immediate relative classification based on such a relationship; he entered into marriage with his wife in good faith; he jointly resided with his wife; and his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a statement and additional evidence.

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:

(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.

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages

(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.

(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 entered the United States on May 6, 2000, as a temporary nonimmigrant worker. The petitioner married A-A-, a U.S. citizen, on April 25, 2001 in Yonkers, New York.¹ The petitioner filed the instant Form I-360 on March 31, 2011. The director subsequently issued two Requests for Evidence (RFEs) of, *inter alia*, the petitioner's qualifying marriage to a U.S. citizen, good-faith entry into the marriage, residence with his wife, and his wife's battery or extreme cruelty. The petitioner, through former counsel, 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.

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 statement and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) provides that evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act requires that the petitioner submit evidence of the marital relationship, including a marriage certificate issued by civil authorities, and evidence of the citizenship of the U.S. citizen spouse. Here, the petitioner initially submitted a copy of A-A-'s birth certificate from [REDACTED] in New York and a certified copy of their New York marriage certificate. The marriage certificate reflects that the petitioner and A-A- were wed on April 25, 2001 in Yonkers, New York.

The petitioner stated on the Form I-360 petition that he resided with A-A- from September 2000 until May 2003. In the RFE, the director questioned whether the petitioner and A-A- have remained married since their May 2003 separation. The director specifically asked the petitioner to answer "yes" or "no" to the question of whether he and A-A- are still married and to provide evidence of a divorce or

¹ Name withheld to protect the individual's identity.

annulment if their marriage has been terminated. The petitioner, however, failed to address this issue in his response to the RFE. Consequently, the director concluded that the petitioner failed to establish that he had a qualifying relationship as the spouse of a U.S. citizen and he is eligible for immediate relative classification based on such a relationship. However, the director did not find that the petitioner's marriage certificate is invalid or fraudulent. There is no evidence in the record to show that the petitioner's marriage to A-A- has been terminated and on appeal the petitioner provides a statement from the county clerk of [REDACTED] New York, certifying that court records from January 1, 2001 until October 2, 2012 do not show that a judgment of divorce was entered for the petitioner and A-A-. Therefore, the director's finding that the petitioner failed to establish that he has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act, is withdrawn from the record.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal also fails to demonstrate the petitioner's entry into his marriage in good faith. In response to the first RFE, the petitioner submitted four undated photographs of himself and A-A- taken at their wedding and two, unspecified locations.

In response to the second RFE, the petitioner submitted a statement in which he recounted that he first met A-A- in a subway station. He stated that during their three month courtship they spoke on the telephone, visited each other, and went to the movies, the park, to church and dance clubs. The petitioner stated that he wed A-A- in a courthouse and afterward they went to A-A-'s apartment for food and cake. He briefly recounted that during their marriage they went shopping, out to dinner and to the movies. Although the petitioner discussed how he met A-A-, their courtship and wedding, he did not describe in probative detail his joint residence with A-A- or any of their shared experiences, apart from the alleged abuse.

In response to the second RFE, the petitioner also submitted letter from two of his friends, [REDACTED] and [REDACTED] who very briefly discussed the petitioner's marriage. [REDACTED] recounted in a one-sentence statement that she attended the petitioner's wedding. [REDACTED] similarly recounted in a one-sentence statement that he visited the petitioner and A-A- at their residence in Mount Vernon, New York. Their statements provide no probative information regarding the petitioner's good faith in entering the relationship.

On appeal, the petitioner submits a letter from his friend, [REDACTED] briefly stated that the petitioner and A-A- have invited him to their home for dinner on several occasions and he has been on several family and church trips with them. However, he failed to discuss any particular social visit or other occasion with the couple in detail, or provide detailed information establishing his personal knowledge of the relationship.

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 show that the petitioner and A-A- were photographed together at their wedding and on two, unspecified occasions. In his statement, the petitioner failed to provide probative details of his joint residence with A-A- or any of their shared experiences, apart from

the alleged abuse. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for A-A- during their courtship or marriage, or otherwise demonstrate their personal knowledge of the relationship. Accordingly, the petitioner has failed to demonstrate that he entered into marriage with A-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

On the Form I-360, the petitioner stated that he lived with A-A- from September 2000 until May 2003 and that their last joint address was in Mount Vernon, New York. The petitioner's marriage certificate, dated April 25, 2001, lists their joint residence at another address in Mount Vernon. In denying the petition, the director found that the Mount Vernon addresses are inconsistent with the address provided on the petitioner's previously filed adjustment of status application (Form I-485), biographic information sheet (Form G-325A), and medical examination form (Form I-693). The director noted that these immigration forms, which are dated May 22, 2001, April 27, 2001 and July 10, 2002, respectively, list his residence as Brooklyn, New York. The director determined that these inconsistencies indicate that the petitioner and A-A- may have resided at separate locations during their period of purported joint residence.

On appeal, the petitioner asserts that the Brooklyn, New York address was where he resided with his uncle prior to meeting A-A-. He states that he used it as his mailing address because it was "the most stable address." He states that A-A-'s address in Mount Vernon was included on their marriage certificate and they subsequently moved to another apartment in Mount Vernon where they resided together. Although the petitioner has explained the reasons for his three residential addresses, he does not describe his home with A-A- or their shared residential routines in any detail, apart from the alleged abuse. The petitioner's friends also do not describe any visits to the couple's residence(s) and the submitted photographs are not identified as having been taken at any specific residence that the petitioner shared with his wife. Accordingly, the record does not establish that the petitioner resided with A-A-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record also fails to establish that A-A- subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner stated that A-A- frequently asked him for money and if he did not give it to her they would have an argument. He also recounted that A-A- refused to attend social events, called him names, and accused him of taking money from her. The petitioner's statements do not indicate that A-A-'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 has submitted no other evidence either below or on appeal of battery or extreme cruelty during his marriage to A-A-. Accordingly, the petitioner has not established that A-A- 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 director's finding that the petitioner failed to establish that he has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immediate relative classification based on such a relationship is withdrawn from the record. However, the petitioner has not established that he entered into marriage with A-A- in good faith, they jointly resided together, and 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 and the petition will remain denied.

ORDER: The appeal is dismissed.