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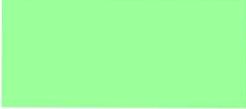
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

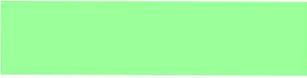


**U.S. Citizenship
and Immigration
Services**



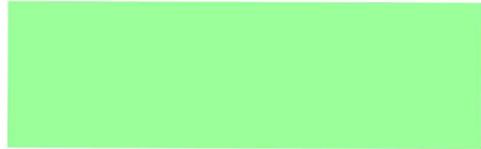
Date: **MAY 30 2013** Office: VERMONT SERVICE CENTER

FILE: 

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:

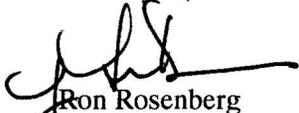


INSTRUCTIONS:

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 petition. 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)(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 United States citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with his wife and entered into marriage with her in good faith. On appeal, the petitioner submits a brief 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:

(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.

* * *

(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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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.

* * *

(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.

* * *

(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. . . . 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 Canada who claims to have entered the United States in August, 1999, as a nonimmigrant visitor. The petitioner married a U.S. citizen on November 13, 2008, in Florida. The petitioner filed the instant Form I-360 on July 18, 2011. The director subsequently issued a Request 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, through counsel, timely appealed.

On appeal, counsel submits a brief, two additional affidavits, and an envelope mailed to the petitioner at his claimed joint residence. In the brief, counsel claims that the petitioner has submitted sufficient evidence to establish his eligibility and that United States Citizenship and Immigration Services (USCIS) failed to correctly apply the "any credible evidence" standard.

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

Joint Residence

The record fails to demonstrate that the petitioner resided with his wife. In his statements, the petitioner does not describe their home or shared residential routines in any detail, apart from the abuse. On the Form I-360, the petitioner stated that he lived with his wife from September 2006 until December 2010 and that their last joint address was on [REDACTED] New York. On the Form G-325A dated May 18, 2011 that the petitioner submitted with his Form I-485. Application to Register Permanent Residence, the petitioner also stated that he lived at the [REDACTED] address beginning in September 2006. In his statement in response to the RFE, however, the petitioner stated that he began living with his wife in March 2008, but does not explain why his Form I-360 lists a different date. The Form G-325A submitted with an earlier Form I-485 application lists yet another date, February 2009, as the date he began residing at the [REDACTED] address. There is no explanation provided for these discrepancies. The petitioner also submitted his wife's 2009 Form W-2, which does not contain the [REDACTED] address where she was purportedly living with the petitioner, but lists another address altogether. Where USCIS can articulate a material doubt regarding the

petitioner's eligibility, the agency may either request additional evidence or deny the application if the material doubt indicates that the claim is probably not true. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In response to the RFE, the petitioner also submitted two statements from his mother stating that the petitioner and his wife lived together from March 2008 until December 2010 and that she saw them often, but she does not describe any visit to the petitioner and his wife's residence or explain the basis of her knowledge regarding their claimed joint residence. Similarly, on appeal, the petitioner submits two affidavits from friends who claim to have visited the petitioner at his and his wife's residence, but neither of them provides any probative descriptions of the petitioner and his wife's shared residence. The envelope addressed to the petitioner at his claimed joint address is dated after he claims to have moved to Florida, and is from a USCIS service center and was sent to the address the petitioner himself provided on his applications. Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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 affidavit dated May 31, 2011, the petitioner recalled that he met his wife at a party, they started dating and went on some short vacations, and that he moved in with her a few months after they married in November of 2008. In response to the RFE, the petitioner submitted a second statement, dated December 15, 2011, in which he added that at the party, they started talking and exchanged telephone numbers. The next weekend, he and others went to the beach with his wife, and they talked more and began to keep in touch over the telephone two times per week. The petitioner reported that his wife visited Florida for the Labor Day holiday and they had their first date at Cheesecake Factory. A few days later they went to the beach together. He stated that he later visited his wife in New York and they fell in love with each other. The petitioner's wife then visited Florida and they went to Key West, Florida, together. The petitioner asserted that he moved in with his wife in March and that they were married and lived happily for two years. The petitioner explained that he did not have much documentation to establish that he married his wife in good faith because she refused to put his name on anything and destroyed most of their photographs together, and that because he did not have a social security number, he could not open any accounts. Although his second statement provided more information than his original affidavit, the petitioner did not describe in probative detail his courtship with his wife, their engagement, wedding, or their shared experiences. The director correctly concluded that this evidence was insufficient to demonstrate that the petitioner married his wife in good faith.

The petitioner submitted five letters from friends and relatives. These letters provided no specific information demonstrating that the petitioner married his wife in good faith, and many of them described only the abuse the petitioner's wife subjected him to. In her two statements, the petitioner's mother stated that the petitioner and his wife were married, that she met and talked to the petitioner's wife, that she attended their wedding, and that the petitioner and his wife lived happily for two years. The petitioner's mother did not provide any probative information regarding the petitioner's good faith in entering the relationship. None of the letters submitted describe the affiants' observations of the

petitioner's interactions and relationship with his wife aside from the abuse. The petitioner also submitted his wife's tax transcript and Form W-2 from 2009, but as explained above, the Form W-2 is addressed to his wife at a different address. In addition, the petitioner's wife filed her taxes as "single"; this does not support the contention that the petitioner married his wife in good faith. The photographs of the petitioner with his wife on a few unspecified occasions are not accompanied by any explanation of their significance. The director correctly concluded that the evidence submitted below provided no specific information demonstrating that the petitioner married his wife in good faith.

On appeal, the counsel submits affidavits from two friends who briefly mention that the petitioner is married and [REDACTED] states that he witnessed the petitioner's marriage to his wife. Neither [REDACTED] nor [REDACTED] describe the petitioner's intentions in entering into his marriage or discuss their observations of the petitioner's interactions and relationship with his wife. These affidavits do not provide any probative information showing that the petitioner entered into his marriage in good faith.

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. While the petitioner explained why he lacks documentary evidence of his good faith marriage to his wife, 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 statements, 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 or family 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). The relevant documents submitted are insufficient to show that the petitioner entered into the marriage in good faith. 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.

On appeal, counsel asserts that the petitioner submitted sufficient evidence to establish his eligibility and that USCIS failed to apply the "credible evidence" standard. Although the director failed to mention every piece of evidence submitted below, this oversight has not prejudiced the petitioner. The AAO has reviewed all of the relevant evidence on appeal, and as explained above, the record is insufficient to show that the petitioner married his wife in good faith or shared a joint residence with her. Furthermore, while counsel is correct that all credible evidence relevant to the petition will be considered, this evidentiary standard is not equivalent to the petitioner's burden of proof. See INA § 204(a)(1)(J); 8 C.F.R. § 204.2(c)(1). Accordingly, the mere submission of evidence that is relevant and credible may not always suffice to meet the petitioner's burden of proof. Here, the preponderance of the relevant evidence does not show that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, or that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Moral Character

Beyond the director's decision,¹ the petitioner has failed to establish his good moral character. The petitioner claims to have lived in New York from March 2008 until December 2010. While the petitioner submitted police clearances from the state of Florida, where he currently resides, the petitioner did not submit a local police clearance or a state-issued criminal background check from New York, as required under 8 C.F.R. § 204.2(c)(2). The present record thus fails to establish the petitioner's good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) 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 and joint residence with his wife. Beyond the director's decision, the petitioner has not established the requisite good moral character. 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 at 375. 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.

¹ An application or 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).