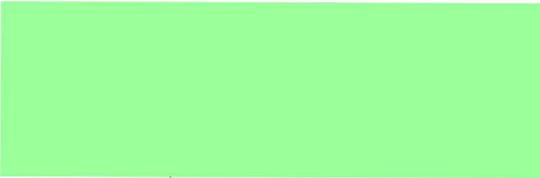




U.S. Citizenship
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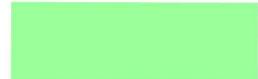
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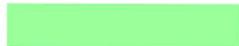
Date: OCT 22 2013

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“the director”) denied the immigrant visa petition and affirmed his decision upon granting a subsequent motion to reopen. 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner entered into marriage with his United States citizen spouse in good faith and was exempt from the bar to approval of his petition under Section 204(g) of the Act. The director also determined that the petitioner failed to establish that his wife subjected him to battery or extreme cruelty during their marriage and that he is a person of good moral character.

On appeal, the petitioner, through counsel, briefly reasserts the petitioner’s eligibility and submits 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 record in this case indicates that the petitioner was in removal proceedings at the time of his marriage. In such a situation, section 204(g) of the Act prescribes:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien’s right to remain in the United States], until the

alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after his marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, which states in pertinent part:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

8 U.S.C. § 1255(e) (emphasis added).

The eligibility requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are 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 or the self-petitioner's child, 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:

(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.

(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 India who entered the United States on March 29, 2006 as a nonimmigrant visitor. The petitioner was placed in removal proceedings on November 14, 2007. The petitioner remains in removal proceedings and his next hearing is on April 7, 2014 at the [REDACTED]. He married A-K-¹, a U.S. citizen, on March 30, 2009 in [REDACTED], Maryland. The petitioner filed the instant Form I-360 on July 14, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty and the petitioner's good moral character. In the decision letter stating that the Form I-360 was denied as abandoned because a response to the RFE was not received, the director determined that the petitioner was further not eligible for failure to demonstrate that he is exempt from the bar to approval of his petition under section 204(g) of the Act. The director granted a subsequent motion to reopen but affirmed his decision to deny the petition. The petitioner, through counsel, timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. Beyond the director's decision, the petitioner has also not established that he is eligible for immediate relative classification based on his marriage to A-K-². The appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

² 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).

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavits and letters from the petitioner's friends, [REDACTED]

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In his first affidavit, the petitioner stated that the abuse began at the beginning of their marriage and that A-K- gave him a hard time about money which caused him to feel depressed. He stated that she called him derogatory names when she was angry, insulted his culture, and threatened him with deportation. He stated that she threw him out of the house frequently and he believed that she cheated on him with other men causing him to question the paternity of their daughter. He described one occasion when A-K- called him names for buying the wrong type of juice at the store which caused him to break down in tears. In his second affidavit, the petitioner stated that he did not have further evidence of the abuse because he never expected that he would be in this position. He stated that when he confronted A-K- about not being able to obtain their daughter's birth certificate, she started fighting with him. He stated that when he again tried to talk to A-K- about his suspicions, A-K- slapped him in front of his friends and threw him out of the house. The petitioner's statements do not indicate that A-K-'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's description of the alleged battery consists of a brief, one-sentence statement that fails to provide any probative details.

The petitioner's friend, [REDACTED] stated that the petitioner told him that A-K- called him names and physically abused him. Mr. [REDACTED] stated that on several occasions, he had to go and pick up the petitioner after A-K- kicked him out of their house. Mr. [REDACTED] also stated that he witnessed A-K- slap and push the petitioner on one occasion. The petitioner's friend, [REDACTED] stated that he witnessed A-K- say obscenities to the petitioner while at a restaurant because the petitioner had paid for everyone's meal. He stated that the embarrassment caused the petitioner to cry. Mr. [REDACTED] stated during a visit at the petitioner's home, he heard A-K- say obscenities to the petitioner during an argument about whether to lend Mr. [REDACTED] the petitioner's car. Neither of the petitioner's friends describes behavior that involves extreme cruelty as that term is defined in the regulation. The incident of physical abuse discussed in Mr. [REDACTED]'s letter lacks probative details.

On appeal, counsel asserts that the petitioner previously submitted probative documentation regarding the claimed abuse. However, the petitioner's affidavits and the statements provided by his friends failed to provide substantive information about A-K-'s treatment of the petitioner and no new evidence regarding the claimed abuse was submitted on appeal. When viewed in the aggregate, the relevant evidence submitted below is insufficient to establish that A-K- subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) provides that evidence of a petitioner's good moral character includes local police clearances or state issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case during the period beginning in July of 2009 and ending in July of 2011). The record indicates that during this period, the petitioner resided in Pennsylvania. In response to a RFE on a notice of prima facie determination, the petitioner submitted seven identical letters from his friends attesting to his good moral character and a criminal record check based upon his biographical data from the Pennsylvania State Police. The record check, dated August 5, 2011, stated that the petitioner had no criminal record in Pennsylvania. The director found the evidence insufficient to establish the petitioner's good moral character.

On appeal counsel asserts that the petitioner submitted numerous affidavits from his friends attesting to his good moral character. The petitioner further provides a Pennsylvania Child Abuse History clearance dated March 6, 2013 showing that no record exists in the Pennsylvania Department of Public Welfare's statewide Central Registry and a second Pennsylvania State Police Response for Criminal Record Check dated February 8, 2013 showing no criminal record. The petitioner also submits a Federal Bureau of Investigations (FBI) criminal background check based on a fingerprint search showing that his only arrest was by United States Immigration Customs Enforcement (ICE) as a deportable alien. Accordingly, the petitioner has demonstrated by a preponderance of the evidence that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner failed to establish that he married A-K- in good faith. The relevant evidence on the record contains the petitioner's affidavits; a copy of their 2010 federal income tax return showing their filing status as married filing jointly, a copies of utility statements, copies of bank statements, a copy of a lease, and photographs of the petitioner and A-K- on their wedding day. The bank statements and the utility statements are dated just prior to when the petitioner and A-K- separated. The 2010 federal income tax return is unsigned and undated and there is no indication that the tax return was actually filed. The photographs show only that the petitioner and A-K- were photographed together on their wedding day.

Regardless of the deficiencies of the record, 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), 204.2(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." See 8 C.F.R. § 204.2(c)(2)(vii). In his first affidavit, the petitioner did not describe how he met A-K-. He stated that when he was dating A-K-, life was good and he felt that it would only get better. He did not describe in further detail their courtship, wedding ceremony,

shared residence and experiences apart from the alleged abuse. In his second affidavit submitted in response to the RFE, the petitioner mainly spoke to the claimed abuse and did not further describe in any detail their courtship, wedding ceremony, shared residence and experiences. The affidavits from his friends also did not contain probative details regarding the petitioner's intentions in marrying A-K-. [REDACTED] stated that he attended the petitioner and A-K-'s wedding ceremony but did not describe any visit or social occasion with the couple in probative detail or otherwise provide detailed information establishing his personal knowledge of the relationship. [REDACTED] stated he knew the petitioner and A-K- as a married couple but failed to provide any substantive information about the petitioner's marital intentions or his knowledge of the relationship.

On appeal, counsel briefly asserts that the petitioner and A-K- "resided together as husband and wife in good faith" until A-K-'s infidelity came to light but does not submit any additional evidence to overcome the deficiencies of the record. The utility bills are dated shortly before the couple's separation and the tax return is unsigned. Although the petitioner submitted a joint residential lease, he did not describe his shared residence with his wife. Neither of the petitioner's friends discussed in probative detail their observations of the petitioner's interactions with or feelings for his wife during their courtship or marriage. Counsel fails to show that the petitioner's affidavits and the letters from his friends provided sufficient detail to adequately address the petitioner's good-faith intent. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with A-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

Because the petitioner married A-K- while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard.") To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. As the petitioner failed to establish his good-faith entry into his marriage with A-K- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his

marriage under the applicable heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

Beyond the director's decision, the petitioner is also not eligible for immediate relative classification based on his marriage to A-K-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv) because he has not complied with, nor is he exempt from section 204(g) of the Act.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Although the petitioner established his good moral character, he failed to establish that he was subjected to battery or extreme cruelty by A-K- during their marriage and that he married her in good faith. He further failed to demonstrate he is exempt from the bar to approval of his petition under section 204(g) of the Act and that he is eligible for immediate relative classification based on his marriage to A-K-. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.