



U.S. Citizenship
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Services

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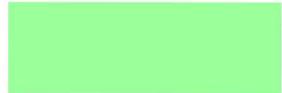


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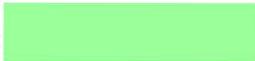
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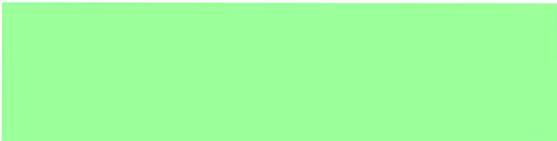
IN RE:

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:

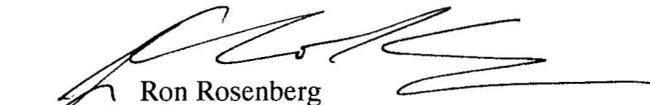


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 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 resided with his wife during their marriage, that he was subjected to battery or extreme cruelty by her during their marriage, and that he entered into the marriage in good faith. On appeal, the petitioner submits additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 explained in 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 or the self-petitioner's child, 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 explained in 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.

* * *

(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 the Dominican Republic who entered the United States on or about July 4, 2004, without being admitted or paroled. The petitioner married M-R-¹, a U.S. citizen, on January 9, 2010, in Puerto Rico. The petitioner filed the instant Form I-360 on September 13, 2010. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residency with M-R-, her battery or extreme cruelty, and his good-faith entry into the marriage. The petitioner, through counsel, timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

We conduct appellate review on a *de novo* basis. *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. The additional evidence on appeal does not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Joint Residence

The petitioner stated on his Form I-360 that he resided with M-R- from January 9, 2010, until April 2010. Although the record contains two sworn statements from the petitioner, he did not discuss living with his wife apart from the abuse. In response to the RFE, counsel submitted a letter from the petitioner's landlord, [REDACTED] who stated that "by lease contract of April 7, 2010," she rented the second floor of her property to the petitioner for one year. She indicated that the petitioner's wife lived with the petitioner for one month.

The petitioner failed to provide any probative details of joint residency with his wife after their marriage. He did not describe, for example, their marital home, their shared belongings, or provide any other substantive information regarding his residence with M-R- after their marriage. The letter from Ms. [REDACTED] is insufficient to demonstrate joint residency. She does not indicate which month M-R- lived with the petitioner and does not indicate that she ever visited the former couple in their home. In addition, her assertion that the petitioner signed a one-year lease beginning on April 7, 2010, contradicts the petitioner's Biographic Information Form (Form G-325A) which indicated he lived there from November 2009 until April 2010.

The record contains this unresolved inconsistency and lacks detailed and probative information regarding the petitioner's joint residence with his wife during their marriage. The preponderance of

¹ Name withheld to protect the individual's identity.

the evidence does not demonstrate that the petitioner resided with his wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.²

Battery or Extreme Cruelty

The petitioner failed to establish that M-R subjected him to battery or extreme cruelty. In his August 30 and September 6, 2010 sworn statements, the petitioner indicated that M-R- mistreated his youngest daughter, wanted to control his income, and threatened to have him deported if he did not give her his money. The petitioner recounted that on April 24, 2010, M-R- physically assaulted him when he felt too tired to go to work. He also recounted that on April 26, 2010, M-R- deflated the four tires on his car. In addition, the petitioner stated that she falsely accused him of hitting her and filed for a protective order, causing him to be incarcerated for 37 days. He described that after he was released from custody, he returned to find that M-R- had taken all of his and his daughter's belongings. The petitioner's landlord, Ms. Medina, indicated that she heard M-R- yelling at the petitioner and that M-R- "took out the four (4) tires of her husband's car and left it standing on blocks in front of [the] property."

In a report submitted in response to the RFE, licensed psychologist [REDACTED] stated the petitioner reported he was physically, emotionally, and verbally abused by his wife. The petitioner reported to Dr. [REDACTED] that M-R- mistreated his daughter and assaulted him physically and verbally. Dr. [REDACTED] stated the petitioner felt scared all the time and experienced panic episodes as a result of his wife's unpredictable behavior. In addition, an assessment by a Social Worker, [REDACTED] stated that M-R- reportedly shouted at the petitioner's daughter and used obscene words. Ms. [REDACTED] also recounted that M-R- forced him to have sexual relations and threatened to castrate and deport him.

On appeal, the petitioner submits an additional sworn statement, reiterating he was falsely accused of domestic violence and contending that the case against him was dismissed. A copy of a Resolution from the Commonwealth of Puerto Rico General Justice Court in San Juan indicates that the case against him was dismissed on June 8, 2010.

The record shows that the petitioner's wife accused him of domestic violence, but that the case against him was dismissed. However, the record does not establish that the petitioner's wife subjected him or his daughter to battery or extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner failed to provide probative details regarding his wife's mistreatment of his daughter. With respect to the incident on April 24, 2010, the petitioner failed to provide specific information sufficient to establish that he was battered by his wife or that her behavior included other actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi). In addition, the petitioner's statements are inconsistent with Dr. [REDACTED] report and Ms. [REDACTED] assessment. Ms. [REDACTED] recounted that M-R- forced the petitioner to

² The petitioner filed a second Form I-360 on November 30, 2011, and submitted documentation in support of that self-petition. This second Form I-360 was denied on March 1, 2013, and a motion to reopen that self-petition remains pending. As the second petition remains pending, we will not address any evidence submitted with that petition which was not submitted in the record for this case.

have sexual relations and threatened to castrate him, and Dr [REDACTED] reported that the petitioner was so fearful of his wife that he suffered panic episodes. However, the petitioner makes no mention of these incidents. Accordingly, the petitioner has not established by a preponderance of the evidence that his wife subjected him or his child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.³

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner entered into marriage in good faith. Aside from stating in his initial sworn statement that he and M-R- were in a close relationship for three years before they married, the petitioner failed to describe the couple's courtship, wedding ceremony, shared residence and experiences, or his intentions for marrying M-R-. See 8 C.F.R. § 204.2(c)(2)(vii). On appeal, the petitioner reasserts that his wife abused him, but does not address his marital intentions and submits no other, relevant additional evidence. Therefore, the petitioner has not demonstrated that he entered into marriage with M-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that he resided with his wife after their marriage, that she subjected him or his child to battery or extreme cruelty during their marriage, or that he entered into the marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.

³ Additional relevant evidence was submitted in support of the petitioner's subsequent Form I-360, but is not within the record for this case. See *supra*, n.2.