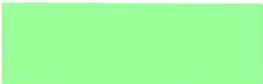


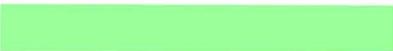
(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **AUG 18 2014**

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)



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 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 the marriage with his spouse, a United States citizen, in good faith, and that she subjected him to battery or extreme cruelty during their marriage. On appeal, counsel for the petitioner submits a brief.

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 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)(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.

* * *

(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.

Facts and Procedural History

The petitioner, a citizen of Kenya, entered the United States on May 27, 2006 as a nonimmigrant F-1 student. On March 19, 2009, he married M-W¹, a United States citizen, in Texas. The petitioner filed the instant Form I-360 on June 11, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into marriage and the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner appealed.

¹ Name withheld to protect the individual's identity.

We review 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. The appeal will be dismissed for the following reasons.

Good Faith Entry into the Marriage

The director determined that the petitioner failed to establish that he entered the marriage with M-W- in good faith. Counsel's claims on appeal fail to overcome this ground for denial. The relevant evidence initially submitted by the petitioner includes his personal statement, statements of two friends, and joint financial documents. In his initial statement, the petitioner recalled that he first met M-W- in February 2009 at a party in Dallas, they exchanged numbers, kept in touch after he returned to Oklahoma, and developed feelings for each other. He stated that he moved to Dallas in December 2009, asked M-W- to move in with him, and proposed to her. The petitioner recalled that the marriage began to deteriorate after a few months. As noted in the RFE, the dates provided by the petitioner indicate that he and M-W- married one month after they met and did not reside together until nine months after marrying. In a supplemental statement submitted in response to the RFE, the petitioner revised the dates but provided no explanation for the discrepancies. The petitioner recounted how he first met M-W- at a party in 2008, they conversed, exchanged numbers, spoke on the telephone regularly, he visited her in Dallas, moved there in late 2008, they married in March 2009, hosted a small gathering after the wedding to celebrate with friends, and moved in together. He recalled that all was well in the beginning and he enjoyed coming home in the evening to M-W- and her son, [REDACTED]. The petitioner did not, in either statement, describe in probative detail his courtship with M-W-, their engagement, wedding, joint residence or any shared experiences, apart from the claimed abuse.

In her statement, [REDACTED] wrote that she and the petitioner were close friends, and that after he told her about M-W-, the three met for lunch and she found them to be a happy couple. She recalled that in early 2009, the petitioner told her he wanted to marry M-W-, and she believed they would have a successful marriage. Ms. [REDACTED] stated that the former couple married sometime that year, moved in together, and she often met them at social events where the petitioner was affectionate toward M-W-. She wrote that things changed after one year of marriage when the petitioner and M-W- seemed distant at events. In his statement, [REDACTED] wrote that he and the petitioner have been close friends since 2004 and after the petitioner told him he was in love, Mr. [REDACTED] met the former couple one night for drinks and thought they seemed happy, but after the petitioner moved to Dallas later that year, they did not keep in touch very often. Mr. [REDACTED] sometimes spoke with the petitioner by telephone after he wed, but they did not spend much time together and the petitioner did not always return his calls.

Neither of the petitioner's friends' statements fully supports his claims. While Ms. [REDACTED] indicated that she and the petitioner were very close and she often saw him with M-W-, she does not appear to know when the former couple wed. While she stated that the marriage began to show signs of decline after one year, the petitioner indicated that it deteriorated within a few months. Mr. [REDACTED] stated that the petitioner married toward the end of 2009, when they actually wed in March. Mr. [REDACTED] did not indicate that he observed the former couple's relationship more than once before they married, following a single telephone call by the petitioner, and then rarely thereafter. While both Mr. [REDACTED]

and Ms. [REDACTED] described themselves as close friends of the petitioner, neither appear to have attended the post-wedding celebration with friends the petitioner stated that he hosted at his home. In addition, neither of them described any particular social occasion in detail or otherwise provided probative information establishing the petitioner's good-faith marital intentions.

On appeal, counsel contends that the director erred in finding that the petitioner's marriage to M-W- "is not *bona fide*" due to a typographical error. The director made no such finding concerning the *bona fides* of the petitioner's marriage, but did identify a number of date inconsistencies between the petitioner's initial and supplemental statements. As discussed above, the RFE identified that the dates provided by the petitioner in his initial statement indicate that he and M-W- met in February 2009, married one month later in March 2009, and did not reside together until at least December 2009 when he moved to Dallas. In response to the RFE, the petitioner submitted a supplemental statement in which he revised the dates on which he met M-W-, relocated to Dallas, married M-W-, and moved in with her. Counsel asserts that the petitioner's claim in his initial statement that he met M-W- in 2009 is most likely a typographical error and that because other affiants reported a March wedding date the petitioner likely misremembered the correct date of his wedding in his initial statement. The petitioner himself, however, did not explain in his supplemental statement the errors in his first and he has not addressed the discrepancies on appeal.

Joint financial documents submitted for the record indicate that the petitioner and M-W- resided together, shared three accounts during the marriage and jointly filed income tax returns for 2010 and 2011. The petitioner did not explain in response to the RFE why he and M-W- filed a joint return for 2011 after indicating that they separated in April 2011. Counsel does not address the joint tax return filing on appeal, and no new evidence has been submitted for the record. Without a probative account of the petitioner's relationship with M-W-, the remaining documents alone are insufficient to establish that the petitioner married M-W- in good faith.

On appeal, counsel contends that cohabitation and consummation are indicia of a good faith marriage, and cites *Matter of Stowers*, 22 I&N Dec. 605 (BIA 1999); *Matter of Lovo*, 23 I&N Dec. 746 (BIA 2005); and *Matter of Sosa* (15 I&N Dec. 572 (BIA 1976)). None of the cases cited by counsel involve self-petitioners under section 204(a)(1)(A)(iii) of the Act or are instructive concerning the requisite good-faith entry into marriage. In *Stowers*, the legacy Immigration and Naturalization Service (INS) terminated the applicant's conditional resident status after learning that he and his wife were not cohabiting. The decision does not hold that cohabitation is always indicative of a good-faith marriage. In *Lovo*, the Board of Immigration Appeals (BIA) addressed whether the Defense of Marriage Act (DOMA) makes invalid for immigration purposes a marriage involving a postoperative transsexual, a decision inapplicable to these proceedings. In *Sosa*, the BIA found that the applicant's marriage was not viable at the time he applied for an immigrant visa and sought admission to the United States because while the marriage was not a sham, the applicant "and his wife lived together for only one week after their marriage; that the marriage was never consummated; and that the applicant's wife refused to live with him." *Sosa*, 15 I&N Dec. at 573. While relevant, joint marital residence and consummation of a marriage do not necessarily establish a self-petitioner's entry into the marriage in good faith. In this case, regardless of whether the petitioner resided with his wife and whether their marriage was consummated, the record contains unresolved inconsistencies and lacks a probative

account of the petitioner's courtship and marriage. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with M-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The director determined that the petitioner's spouse did not subject him to battery or extreme cruelty and counsel's claims on appeal fail to overcome this ground for denial. In his initial statement, he petitioner recalled that early in the marriage, he and M-W- occasionally quarreled about sex and money, and he noted that he alone worked and provided for M-W- and her son. He explained that M-W- sought a lavish lifestyle, when he declined to take her shopping she questioned his love and said he was not a good provider, and when he relented she took advantage by overspending. The petitioner encouraged M-W- to find a part-time job, but she was not hired because of an earlier record. He recalled that money became a constant issue and he tried to avoid arguments with M-W- who yelled, called him names, disparaged his African heritage, and did not like when he spoke in Swahili to family and friends. The petitioner stated that M-W- was sometimes physically aggressive, but he did not provide probative details of any particular incident. He indicated that M-W- became pregnant in 2010, gave birth to a boy that October, and a few months later told him that he was not the child's father. The petitioner recounted that while M-W- confessed to an affair, she accused him of neglecting her by spending all his time at work. He recalled that M-W- withdrew large sums of money without notifying him and then refused to discuss the issue. The petitioner indicated that sometime thereafter, M-W- took her children and moved out of the home while he was at work. He stated that for a period of time after M-W- moved out, different men came to the door looking for her. The petitioner recalled that he tried to repair his marriage, but M-W- told him that he could not please her and she wanted a divorce.

In response to the RFE, the petitioner explained that M-W- threatened to leave him when she learned he was sending money to his family in Kenya. The petitioner continued to secretly send money and recounted how when he came home from work one evening in 2010, M-W- cursed and yelled at him while holding a wire transfer receipt, and accused him of not caring about her and her son. He stated that M-W- had him drive her to her mother's home where she spent the weekend and did not take his calls, a pattern repeated on other occasions. The petitioner recounted that M-W- grew angry over the topic of his family visiting, mocked their language, and demanded that he speak to them in English. The petitioner explained that his family and African friends sensed that they were not welcome in his home with M-W-, although she still expected him to visit her friends with her. He recalled that M-W- expressed dissatisfaction in their love life and as a result, he participated in intimate acts that were unusual to him in order to please her. The petitioner learned later that despite his efforts, M-W- had been cheating on him while he was at work. He stated that because M-W- continued to write checks on their joint account after they separated and overdrew the funds, he had to close the account. The petitioner's statements do not demonstrate that his spouse battered him, or that her 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).

In her statement, [REDACTED] recounted how during one evening out, M-W- told her she was angry that the petitioner was working so much and not spending enough time with her. She stated that later that night, M-W- became irritated that the petitioner and his friends were speaking Swahili and accused

him of liking them better than her. Ms. [REDACTED] indicated that M-W- made unspecified demeaning comments that embarrassed the petitioner. Ms. [REDACTED] wrote that she did not see the former couple much after that but the petitioner revealed a few months later that the baby was not his, M-W- left him, and said that she wanted a divorce. In his statement, [REDACTED] recalled that the petitioner threw a birthday party for M-W- at a restaurant in February 2010, but M-W- caused a scene and the group was asked to leave. Mr. [REDACTED] recalled that the petitioner stayed overnight with him and during the drive home, told him M-W- had mistreated him. The statements of Ms. [REDACTED] and Mr. [REDACTED] do not demonstrate that M-W- subjected the petitioner to battery, threats of violence, psychological or sexual abuse, or other conduct constituting extreme cruelty as defined in the regulation.

In response to the RFE, the petitioner submitted a letter from [REDACTED], a senior crisis counselor and legal advocate for the [REDACTED]. Ms. [REDACTED] stated that the petitioner first presented on April 26, 2012 and was later seen for eleven 45 to 50-minute sessions. After briefly summarizing claims reported by the petitioner, Ms. [REDACTED] concluded that some of the petitioner's symptoms of depression and post-traumatic stress disorder were improving. While we do not question Ms. [REDACTED] professional opinion, her assessment conveys brief summaries of the petitioner's statements, does not refer to or describe any specific incidents, and provides no further probative information of the claimed abuse.

On appeal, counsel asserts that the director erred in finding the petitioner's personal statements incredible because the petitioner's supplementary statement, submitted in response to the RFE, added new details to his claim of abuse that were not discussed in the petitioner's initial statement. Although the director's credibility determination was flawed, the preponderance of the credible relevant evidence in the record does not establish that the petitioner's spouse subjected him to battery or extreme cruelty during their marriage. Upon *de novo* review, the evidence does not demonstrate that the petitioner's spouse ever battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not shown that his spouse 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 not established that he entered into the marriage with M-W- in good faith or that she subjected him to battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.