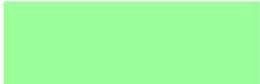


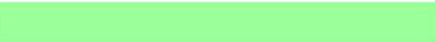


U.S. Citizenship
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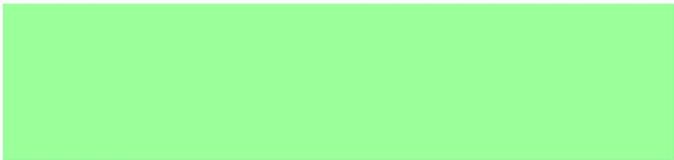


Date: **AUG 18 2014** Office: VERMONT SERVICE CENTER File: 

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)

ON BEHALF OF PETITIONER:

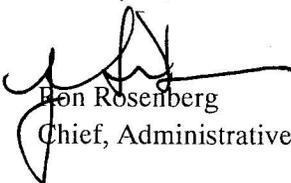


INSTRUCTIONS:

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 Acting 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 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 married his wife in good faith.

On appeal, the petitioner, through counsel, submits a brief and 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 explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

* * *

(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 was born in the Philippines, and entered the United States as a H-2B worker on December 24, 2005. The petitioner married P-O-¹, a U.S. citizen, on December 9, 2010. The petitioner filed the instant Form I-360 on September 5, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage. The petitioner responded with additional evidence that the director found insufficient, and the director denied the petition.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On a full review of the record, the petitioner has not overcome the director's ground for denial.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner married his wife in good faith. In his initial declaration, the petitioner recounted that the first time he met P-O- was through a common friend in 2010. He recounted that he was attracted to P-O- and that they exchanged addresses and cell phone numbers. He stated that he would communicate with P-O- by cell phone and text messages and meet her on his day off from work. The petitioner stated that they had a good relationship and married on December 9, 2010, and had a simple wedding and reception. The petitioner stated that he and his wife bought furniture and appliances for their new home. However, the petitioner provides only cursory statements about his first meeting with P-O-, their courtship, his decision to marry, and their wedding; and he does not discuss in further detail their joint residence or any of their shared experiences, apart from the abuse.

¹ Name withheld to protect individual's identity.

the petitioner's employer and friend, briefly stated in her letter that she organized the petitioner's wedding and reception. She stated that the petitioner and P-O- were in love, but she did not give any detailed substantive information about her observations of the petitioner's courtship or marital relationship with P-O-.

The director correctly determined that the relevant documents submitted below failed to demonstrate that the petitioner married his wife in good faith. The lease agreement shows a joint residence for the petitioner and his wife at . The letter from their landlord, confirms the couple shared a residence. The photographs are of the couple on their wedding day and on a few other occasions. However, photographs of a few occasions and evidence of a shared marital residence are not enough to demonstrate that the petitioner married his wife in good faith. In the absence of a detailed account from the petitioner about his first meeting with his wife, their courtship, his decision to marry, and their joint residence and shared experiences, the submitted evidence is insufficient to establish the petitioner's good faith entry into his marriage.

On appeal, the petitioner submits an additional declaration to explain why he did not have many traditional forms of joint documentation, and counsel states that the petitioner provided a detailed account of his relationship with his wife up to their separation. 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 this case, contrary to counsel's claim, the petitioner had not provided a detailed description of his relationship with P-O-. The petitioner's brief statements did not probatively describe his first meeting with his wife, their courtship, his decision to marry, their joint residence, or their shared experiences. Similarly, the letter from Ms. is brief and lacks substantive information to establish her personal knowledge of the petitioner's courtship, engagement, or marital relationship.

Counsel asserts that the director's conclusion was arbitrary, capricious, and an abuse of discretion because the director must establish that the petitioner and his wife never intended to establish a life together, and that the sole purpose of their marriage was for immigration benefits, citing *Bark v. INS*, 511 F.2d 1200, 1201 (9th Cir. 1975) and *U.S. v. Orellana-Blanco*, 294 F.3d 1143, 1145 (9th Cir. 2002). The cases cited by counsel present the issue of a sham marriage and involve benefits that are sought under section 204(a)(1)(A)(i) of the Act through the filing of an alien relative petition (Form I-130). In contrast, the petitioner is seeking classification as an abused spouse under section 204(a)(1)(A)(iii) of the Act. In Form I-130 proceedings, the U.S. citizen petitioner, not the alien beneficiary, bears the burden of proof to establish the bona fides of the marriage. Here, however, the self-petitioner bears the burden of proof to establish, in part, his own good-faith entry into the marital union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(aa). The regulations for self-petitions under section 204(a)(a)(A)(iii) of the Act further explain the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). In this case, the petitioner has not demonstrated his own good-faith entry into the marital union. He has not provided a detailed account of his

relationship with P-O-, and the remaining evidence is insufficient to establish his good faith entry into his marriage.

Counsel contends that the director should have given credit to the evidence of the petitioner's declarations, photographs, lease agreement and landlord's letter showing a shared residence, his wife's use of her married name, and the abuse inflicted on the petitioner by his wife. Counsel cites *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), to assert that conduct before and after the marriage is evidence of intent to establish a life together. In making a decision on a self-petition the Service has sole discretion to determine what evidence is relevant and credible and the weight to be given that evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

Review of the record reveals that the director accurately addressed and assessed the weight of the relevant evidence. Additionally, we have reviewed the record *de novo* and considered all of the relevant evidence and counsel's assertions on appeal. Counsel argues that the director should have given consideration to the petitioner's wife's use of her married name and that the petitioner was abused by his wife. The action of the petitioner's wife in using her husband's name upon marriage does not show the petitioner's own good faith entry into the marital relationship. Similarly, section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements, and meeting one or more eligibility requirements will not necessarily demonstrate the others. When viewed in the totality, the relevant evidence in this case does not demonstrate 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.

Conclusion

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.