



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: AUG 20 2014

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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 the existence of a qualifying relationship with a U.S. citizen and corresponding eligibility for immediate relative classification. The director also determined that the petitioner did not establish that he entered 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, that a spouse may self-petition under these provisions if he:

- (i) . . . (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

- (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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . abuser. . . .

* * *

(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 Kenya who entered the United States on August 17, 2004, as a nonimmigrant student. On [REDACTED] Texas, the petitioner married D-N,¹ who he contends is a U.S. citizen. The petitioner filed the instant Form I-360 on October 18, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, D-N's citizenship status and the petitioner's good-faith entry into the marriage. The petitioner 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.

The AAO conducts 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 evidence submitted on appeal does not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner's Form I-360 asserts that his wife was born in the United States. The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of citizenship of the United States citizen abuser. The petitioner did not provide evidence of his wife's citizenship status in response to

¹ Name withheld to protect the individual's identity.

the RFE and has not submitted any relevant evidence on appeal. A search of relevant U.S. Citizenship and Immigration Services (USCIS) records also failed to provide any evidence of her U.S. citizenship. *See* 8 C.F.R. § 204.1(g)(3). Consequently, the petitioner has failed to demonstrate that he has a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to section 204(a)(1)(A)(iii)(II)(aa)(AA), (II)(cc) of the Act.

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. The petitioner initially submitted a statement describing how he met D-N- while she was working in a convenience store. According to the petitioner, he stopped at the store regularly, and eventually the couple became best friends and decided to get married. He stated they enjoyed outdoor activities together and would go out to eat. The remainder of his initial statement discussed the abuse he experienced. In response to the RFE, the petitioner submitted an additional statement explaining that he thought D-N- was the kindest woman he had ever met and added that they went to the movies, listened to music together, and took long walks. He explained that because he moved in with D-N-, all of the bills were in her name. On appeal, the petitioner submits a new statement as well as one bank statement. He briefly recounted the same experiences he had previously described and explained that because he wanted to live as one entity with his wife, they decided to open a joint bank account together. However, he claimed that because his wife owed money to the bank, they decided to wait to add his wife's name onto his account.

The petitioner's statements are general, lacking probative details of his and his wife's courtship, wedding ceremony, and relationship. Consequently, his statements do not establish that his marital intentions were in good faith. The bank statement is illegible in places and only indicates that D-N- is a "customer[]" to be added later." In addition, the petitioner's name is typed on the form while D-N-'s name is written by hand, detracting from the credibility of the statement.

On appeal, counsel asserts that the director based her decision on derogatory evidence unknown to the petitioner and did not provide the petitioner with notice and a chance to respond. The record lacks any evidence that the director violated the regulation at 8 C.F.R. § 103.2(b)(16)(i). The director's RFE properly notified the petitioner of the deficiencies of his initial evidence and advised him of the type of additional evidence needed to establish his eligibility.

In addition, counsel contends that because the Vermont Service Center found the petitioner to be credible regarding the abuse he suffered, that the petitioner's statements regarding residing together in a good faith marriage should also be deemed credible. Counsel asserts that little documentation exists regarding the couple's living together because the petitioner moved into D-N-'s apartment and, therefore, all of the bills relating to their joint residence were in her name. According to counsel, it is inconsistent to conclude that the petitioner established he was subjected to battery or extreme cruelty while denying his case on the "mundane" point of living together.

As an initial matter, counsel mistakenly addresses joint residence rather than good-faith marriage. The director found that the petitioner resided with his U.S. citizen wife, but did not show he entered into

their marriage in good faith. Joint residence and good-faith entry into the marriage are separate statutory eligibility criteria, each of which must be established independently. *Compare* subsection 204(a)(1)(A)(iii)(II)(dd) of the Act *with* subsection 204(a)(1)(A)(iii)(I)(aa) of the Act.

Regarding the lack of documentation the petitioner was able to provide, we recognize that 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). 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, the lack of documentation to establish a good faith marriage has been explained and is understandable. Nonetheless, in contrast to the petitioner's detailed and probative descriptions regarding the abuse he suffered, as explained above, the petitioner has not provided specific information regarding his and his wife's courtship, wedding ceremony, or shared experiences. The fact that the petitioner established the requisite battery or extreme cruelty does not show that he also demonstrated his entry into the marriage in good faith. The statute contains six eligibility criteria, each of which must be met to establish a self-petitioner's eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. While the same evidence may be relevant to more than one criterion, the record must demonstrate the petitioner's eligibility under all six criteria. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner entered into marriage with D-N- 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 he had a qualifying relationship with a U.S. citizen, is eligible for immediate relative classification based on such a relationship, and entered 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.