

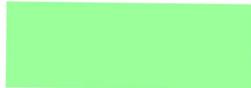
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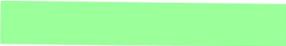
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **DEC 17 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,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 entered into the marriage in good faith, resided with his wife, and that his wife subjected him to battery or extreme cruelty.

On appeal, counsel submits a brief, additional evidence, and copies of previously submitted evidence.

Applicable Law

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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

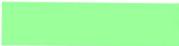
Section 204(a)(1)(J) of the Act further states, in pertinent part:

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 for immigrant classification 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:

(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 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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Pakistan who last entered the United States on [REDACTED] 1991, as a nonimmigrant visitor. The petitioner married a U.S. citizen on [REDACTED] 2003, in Texas. The petitioner and his wife were divorced on [REDACTED] 2010. The petitioner filed the instant Form I-360 self-petition on [REDACTED] 2012. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage; his residence with his wife; and that his wife subjected him to battery or extreme cruelty. The petitioner, through counsel, responded to the RFEs 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 review these proceedings *de novo*. On appeal, 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.

Entry into the Marriage in Good Faith

The relevant evidence submitted fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit, the petitioner stated that he met his wife in February, 2001, at a Korean restaurant and that they liked each other. He indicated that they met every other week and started dating. He stated that he loved her and wanted to marry her so in 2003, he proposed and she agreed to marriage. The petitioner reported (erroneously) that he and his wife were married on [REDACTED] 2003, and bought a house. The petitioner did not describe in probative detail how he met his wife, their courtship, engagement, wedding, or any of their shared experiences, aside from the alleged abuse.

The petitioner also submitted affidavits from family members and friends. The petitioner's wife repeated the petitioner's statements and indicated that they met in 2001, dated, the petitioner proposed, and they were married. [REDACTED] stated that they saw the petitioner and his wife living together and stayed at their house, and that they were married in good faith, but did not state their basis for such knowledge. [REDACTED] also indicated that the petitioner bought his wife jewelry. None of the affiants provided any substantive information regarding their observations of the petitioner's interactions and relationship with his wife prior to and during their marriage, nor did they provide any probative information regarding the petitioner's good faith in entering the marriage. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married his wife in good faith.

The petitioner also submitted evidence that he and his wife had an account at Best Buy, and that his wife had credit cards. The photographs of the petitioner and his wife on a few unspecified occasions are not accompanied by any explanation of their significance and do not shed light on the petitioner's intentions when entering into the marriage. The petitioner submitted copies of his tax documents, including his income tax forms for 2006, 2007, and 2008, showing that he and his wife filed as married. However, other than an acknowledgement letter for taxpayers who file returns electronically from the IRS confirming that his 2008 income taxes were filed, there is no evidence that shows that the other year's taxes were actually filed. The petitioner also submitted a lease, but the lease is dated February 15, 2001, before the petitioner claims to have been living with his wife, and it does not shed any light on his intentions in entering into the marriage. This evidence, without probative testimony, is insufficient to establish the petitioner's intentions upon entering into the marriage. In his affidavits, the petitioner did not probatively describe how he met his wife, their courtship, wedding, his intentions in entering into the marriage, or any of their shared experiences in meaningful detail. When viewed in the aggregate, the relevant evidence does not demonstrate, by a preponderance of the evidence, 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.

On appeal, the petitioner submits additional affidavits. In his affidavit on appeal, the petitioner repeats much of his previous affidavit and adds that he and his wife loved each other's company and went out to eat, to the movies, and to parties together. He also indicates that he met his wife's family. He recalls that he proposed on September 31, 2003, at his apartment and that he and his wife were married. [REDACTED] stated that he met the petitioner and his wife when they moved in next door to him. [REDACTED] indicates that he lived with the petitioner and his wife and they occasionally went to movies and shopping together. [REDACTED] do not describe their observations of the couple's interactions in probative detail. None of the affiants provide any substantive information regarding the petitioner's intentions or interactions and relationship with his spouse prior to and during their marriage.

The petitioner also submits his wife's American Express bill and his own American Express bill, but there is no indication that the petitioner and his wife shared an account, nor does this evidence show the petitioner's intentions in entering into the marriage. Similarly, the letter from Progressive Insurance that lists his wife as the policy holder does not provide any information about whether the petitioner and his wife were both covered under the insurance account or their relationship.

On appeal, counsel contends that evidence of battery, extreme cruelty, and residence supports a finding of good faith marriage, and that the petitioner submitted sufficient evidence under the totality of the circumstances to show his intent at the time of the marriage. The statute and regulations do not suggest such an inference, and each qualifying factor must be established separately. Here, although the petitioner submitted evidence that he and his wife filed their 2008 income taxes as married and the petitioner's wife is listed as the policy holder on a letter Progressive mailed to the petitioner, as discussed above, this evidence, without probative testimony about the petitioner's intentions in entering the marriage or feelings for his wife, is insufficient to establish the petitioner's entry into his marriage in good faith. In his affidavits, the petitioner briefly describes meeting his wife and states that they were married, but does not probatively describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. The pictures of the petitioner

and his wife on a few occasions are not accompanied by any explanation of their significance and do not shed light on the petitioner's intentions when entering into the marriage. The affidavits from the petitioner's family and friends do not state the basis of their knowledge or probatively describe their observations of the petitioner and his wife's interactions. When viewed in the aggregate, the relevant evidence submitted below and on appeal does not demonstrate, by a preponderance of the evidence, 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.

Joint Residence

The petitioner has also failed to establish that he resided with his wife. On the Form I-360, the petitioner stated that he lived with his wife from October 10, 2003, until January, 2010, and that their last joint address was on [REDACTED]. In his affidavit, the petitioner indicated that he moved into his dream house with his wife after they were married. The petitioner did not describe his and his wife's claimed joint residence or their shared residential routines.

The petitioner submitted affidavits in which the affiants stated that the petitioner and his wife lived together. The petitioner's wife indicated that she and the petitioner bought a house together. [REDACTED] stated that they saw the petitioner and his wife living together and stayed at their residence, but their affidavits are not supported by any probative description of their observations of the petitioner and her husband's shared residence or their visits there.

The petitioner also submitted copies of their income tax forms listing their address on [REDACTED] but as stated above, other than for 2008, there is no evidence that said taxes were actually filed. The petitioner submitted a lease, but the lease is dated the month they met, and 2 years before the petitioner claimed that he and his wife began residing together. In addition, the lease lists [REDACTED] as his wife, though he was not married to his wife at that time, and that is not his wife's name.

On appeal, in his affidavit, the petitioner indicates that he and his wife lived together in their dream house from 2003 through 2006, but again, the petitioner fails to provide any description of the shared residence or of their shared residential routines, and this contradicts the petitioner's claim on his Form I-360 self-petition that he lived with his wife until 2010. The petitioner also submits an affidavit from [REDACTED] who states that he met the petitioner and his wife when he lived next door to them and that he saw them after work doing casual things. [REDACTED] the petitioner's brother, indicates that he lived with the petitioner and his wife from 2005 through 2009. This contradicts the petitioner's claim on appeal that he only lived with his wife until 2006. [REDACTED] also stated that the petitioner and his wife lived together before they were married. The petitioner, however, stated that he did not live with his wife until their marriage on [REDACTED] 2003, which further diminishes [REDACTED] credibility. [REDACTED] also recalls that he used to visit the petitioner and his wife at their apartment on occasions like birthdays, Christmas, and eid since 2000. The petitioner did not meet his wife until 2001, so this statement is also inconsistent with other evidence.

Although on appeal counsel contends that the petitioner did not have evidence of joint accounts because his wife had bad credit, and that their house was in his wife's name only, the petitioner

himself does not provide any explanation, and the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, although counsel claims that the petitioner paid all of the bills for their shared residence, neither the petitioner nor counsel explain why the petitioner was unable to provide more documentary evidence listing the address he shared with his wife. The evidence submitted is not sufficient to establish a shared residence during the marriage because the petitioner does not describe his and his wife's home or shared residential routines in sufficient detail, and the affidavits from his friends and family also do not talk about the couple's marital residence in any detail. The petitioner also submitted inconsistent evidence such as the lease and [REDACTED] affidavit. Accordingly, the record does not establish by a preponderance of the evidence that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal demonstrates that the petitioner's wife subjected him to battery and extreme cruelty. In his affidavit, the petitioner stated that his wife abused him verbally and physically. He indicated that his wife argued with him and pushed and shoved him. The petitioner also stated that he called the police on several occasions, and that his wife was arrested once. He further recalled that his wife called him names and threatened him, and that she lied about having children from a previous marriage.

The petitioner submitted a psychological evaluation prepared by [REDACTED] a licensed professional counselor. [REDACTED] confirmed that the petitioner's wife scratched and bit the petitioner and called him names. [REDACTED] diagnosed the petitioner with post-traumatic stress disorder (PTSD), and indicated that the petitioner is suffering from moderate to severe anxiety and some symptoms of depression.

The petitioner submitted affidavits from friends and family. The petitioner submitted an affidavit from his wife in which she confirmed the petitioner's affidavit, and stated generally that she verbally and physically abused him. She indicated that she argued with the petitioner, pushed and shoved him, called him names, and threatened to report him to immigration. [REDACTED] stated that the petitioner's wife gave him a hard time, pushed him, called him names, and tried to hit him in the face. [REDACTED] stated that the petitioner told him that his wife abused him physically and threatened to report him to immigration. These affidavits support the petitioner's claim that he was subjected to battery and extreme cruelty by his wife.

The petitioner also submitted two police reports. The first complaint indicated that on [REDACTED] 2007, the police were called to the petitioner's residence and that the petitioner told the police that his wife scratched him and threw a glass at him that hit him in the chest. The complaint stated that the petitioner's wife also accused the petitioner of hitting her, and the petitioner and his wife were both arrested. The police report dated [REDACTED] 2009, indicated that the petitioner was trying to get away from his wife when she bit him. The police officer observed a fresh contusion on the petitioner's shoulder that appeared to be a bite mark.

On appeal, the petitioner submits additional affidavits. The petitioner repeats his previous testimony and indicates that his wife pushed and shoved him and threatened to report him to immigration. [REDACTED] states generally that the petitioner's wife became physically and verbally abusive, but does not describe any particular incident of abuse.

Upon a full review of all the relevant and credible evidence submitted below and on appeal, the petitioner has overcome the basis of the director's denial. The petitioner has submitted affidavits that describe the battery and abuse that he suffered. He has also submitted medical information which indicates that he is suffering from PTSD as a result of his wife's abuse. The petitioner submitted police reports that indicated that his wife subjected him to battery, and lists the physical injury he received as a result. The record establishes that the petitioner's wife subjected him to physical harm over the course of their marriage. The preponderance of the evidence demonstrates that the petitioner's wife subjected him to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

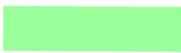
Beyond the director's decision,¹ the record also fails to demonstrate that the petitioner is a person of good moral character. Although the petitioner provided a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition, he failed to describe his good moral character in his declarations as required under 8 C.F.R. § 204.2(c)(2)(v). The petitioner also indicated in his affidavit that he had never been arrested, however, the record shows the petitioner has been arrested on at least two occasions. On appeal, counsel contends that the petitioner misunderstood the word "arrest" to mean found guilty and put in jail, however, the petitioner himself does not provide any explanation for his misleading statement, and as stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner's concealment of his arrests, and his failure to discuss the circumstances surrounding his arrests and his conviction for a gambling related offense, reflect negatively on his moral character. As such, the petitioner has failed to demonstrate that he is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has not established that he entered into marriage with his wife in good faith and that they resided together. He also has not demonstrated his good moral character.

¹ 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).

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NON-PRECEDENT DECISION

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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.

ORDER: The appeal is dismissed.