

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

(b)(6)

Date: **FEB 19 2014**

Office: VERMONT SERVICE CENTER

IN RE: 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 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 entered into marriage with his United States citizen spouse in good faith. The petitioner provided a timely appeal.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) 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 immigrant classification as an abused spouse under 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(1), which states the following:

(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:

(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 is a citizen of Venezuela who entered the United States as a visitor on July 22, 2010. The petitioner married E-T-, a U.S. citizen, on September 29, 2010.¹ The petitioner filed the instant Form I-360 on November 21, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, evidence of a good faith entry into the marriage. The petitioner responded with additional evidence which the director found insufficient. The director denied the petition, and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. 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.

Entry into the Marriage in Good Faith

De novo review of the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner married his spouse in good faith. The relevant evidence in the record consists of personal statements from the petitioner and his friends, bank statements, and a certificate of title for an automobile.

The petitioner stated in his personal statement that he met E-T- through an online chat in November 2007, and communicated with her in this manner, discussing their childhood, relationships, and future until they met in person in Orlando, Florida, on July 22, 2010. The petitioner stated that he helped E-T- with her business, and rather than return to Venezuela in September, he accepted E-T-'s suggestion to stay and get married. The petitioner briefly stated that they were in love and wed on September 29, 2010 before a small group of people. The petitioner did not describe in further detail their courtship, wedding, joint residence or any of their shared experiences, apart from the abuse.

The petitioner's friends, [REDACTED], [REDACTED], [REDACTED], and [REDACTED] that the petitioner and E-T- were a happy couple, but they do not describe their observation in any detail, or give a detailed account of any particular function with the petitioner and his wife, or otherwise establish their personal knowledge of the petitioner's relationship with his wife, apart from the abuse. [REDACTED] declared that he has been friends with the petitioner

¹ Name withheld to protect the individual's identity.

since 2001 and his wife since the summer of 2010, and participated in activities with them, and that they appeared to have a happy marriage. [REDACTED] stated that the petitioner and his wife are her customers and close friends and that she participated in social activities with them and witnessed their loving relationship. [REDACTED] declared that she has been friends with the petitioner since 2005 and his wife since 2010, and that they were a happy couple in love. [REDACTED] stated that the petitioner is his friend and that the petitioner and E-T- were happy when they married.

The record contains a copy of a certificate of title of an automobile that is in name of the petitioner and his wife, but this document standing alone does not establish the petitioner's marital intentions. In the absence of any probative account from the petitioner or his friends about the petitioner's entry into the marriage, a document that reflects joint ownership of an automobile is not sufficient to establish the petitioner's good faith in marrying his wife. The petitioner only briefly described how he met his wife, his courtship and wedding, and did not describe in any detail their shared residence and experiences, apart from the abuse. His friends mention that the petitioner and his wife were in love, but they do not describe in any detail their observations of the relationship of the petitioner and E-T-, and do not discuss in any detail functions or visits with the petitioner and his wife, apart from the abuse.

In this case, when viewed in the totality, the relevant evidence 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.

On appeal, counsel argues that it is a contradiction for the director to find that the petitioner demonstrated a qualifying spousal relationship, but did not demonstrate good-faith entry into the marriage because intent to marry in good faith is inherent in a qualifying spousal relationship. Counsel misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may be submitted to demonstrate, for example, joint residence and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other. Section 204(a)(1)(A)(iii)(I)(aa) of the Act specifically requires the petitioner to establish that "the marriage . . . was entered into good faith by the alien." The petitioner bears the burden of proof to establish not only the validity of his marriage, but also his own good-faith entry into the union. Section 204(a)(1)(A)(iii) of the Act; Section 204(a)(1)(B)(ii) of the Act. The regulations for self-petitions under section 204(a)(1)(A)(iii) and 204(a)(1)(B)(ii) of the Act further explicate 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). Furthermore, in making a decision on a self-petition the determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the Service. 8 C.F.R. § 204.2(c)(2)(i). When viewed in the totality, the relevant evidence 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. The petitioner's statements are brief and do not probatively discuss his courtship, wedding, shared residence or other shared experiences, apart from the abuse. The letters of his friends are brief and lack substantive information to establish their personal knowledge of the petitioner's marital relationship. A document reflecting joint ownership of an automobile does not establish the petitioner's good faith in marrying his wife.

Counsel states that the petitioner's wife destroyed documentation that would establish the petitioner's good-faith entry into the marriage. 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). The determination of what evidence is credible and the weight to be given that evidence lies within the sole discretion of U.S. Citizenship and Immigration Services. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). In this case, we have discussed the lack of probative information in the personal statements from the petitioner and his friends regarding the petitioner's marital relationship. Counsel contends that the petitioner's friends did not describe detailed knowledge of the petitioner's relationship because the petitioner's wife did not abuse the petitioner in public; however, whether the petitioner was battered or subjected to extreme cruelty is not at issue in this proceeding. Had they observed the couple's interactions, the petitioner's friends could have commented on the bona fides of the couple's relationship even without witnessing any abuse.

Conclusion

The petitioner has not overcome the director's ground for denial on appeal. He has not demonstrated that he entered into marriage with his United States citizen spouse in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.