



U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

JUL 01 2014

Office: VERMONT SERVICE CENTER File:



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 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 entered into the marriage with his wife in good faith.

On appeal, the petitioner, through counsel, submits a brief.

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 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 Ghana, and entered the United States as a visitor on March 1, 2004. The petitioner married M-F-¹, a U.S. citizen on June 26, 2006.² The petitioner filed the instant Form I-360 on October 17, 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.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to establish that he married M-F- in good faith and counsel's claims on appeal do not overcome this ground for denial.

¹ Name withheld to protect individual's identity.

² The petitioner submitted copies of two marriage certificates showing the petitioner's marriage to his wife. The first marriage certificate issued in [REDACTED] shows that the petitioner married M-F- on June 29, 2006 and states her date of birth as "July 14, 1858" and the petitioner's birthdate as April 15, 1960. The second marriage certificate issued in Virginia reflects that the couple married on September 26, 2011 and states the same birth date for the petitioner, but identifies M-F-'s date of birth as February 9, 1934. The petitioner stated that when he met M-F-, she told him she was born in 1952. He recounted they had to get a new marriage certificate after they went to an interview regarding the petition for alien relative that M-F- filed on his behalf. The petitioner claimed this was the first time he realized she had lied to him about her age.

The petitioner recounted in his affidavit, dated October 10, 2012, that the first time he met M-F- was in late 2004 at his friend's store in Maryland, and that he and M-F- exchanged telephone numbers. The petitioner stated that they would occasionally meet, and fell in love after they started dating in 2005. He stated that they married on June 29, 2006 in a private ceremony at a minister's home in [REDACTED]. He stated that he moved in with M-F- a few months before getting married and met M-F-'s family members. The petitioner provides only cursory statements about his first meeting with M-F-; their courtship, engagement, and wedding ceremony; and does not discuss his decision to marry, or their joint residence and any of their shared experiences, apart from the abuse. The petitioner's addendum affidavit primarily discusses the abuse in his marriage and provides no insight into his marital intentions.

The petitioner's friends, [REDACTED] and [REDACTED] the petitioner's pastor, all briefly claimed to know the petitioner and M-F- as a loving couple, but they did not provide any detailed substantive information about their observations of the petitioner's relationship with M-F-, apart from the abuse.

The director correctly explained the deficiencies of the relevant documents submitted below and the petitioner submits no additional evidence on appeal. The photographs show the petitioner and his wife pictured together and with other people on unspecified occasions. The employment records show the petitioner's wife is his primary emergency contact, and hospital records reflect that she was at the hospital during the petitioner's admission. The bank account records show the joint address of the petitioner and his wife, but the bank account is in the petitioner's name only. The tax records are unsigned and are not accompanied by any evidence that they were actually filed with the Internal Revenue Service. An agreement to purchase a vehicle is signed by the petitioner and his wife, but the agreement states that the purchase was contingent upon financing, and was not accompanied by any evidence of their joint ownership of the vehicle.

On appeal, counsel declares that the director imposed a heightened evidentiary requirement of joint assets and did not consider the difficulties of obtaining documentation in an abusive marriage. We find no error in the director's assessment of the relevant evidence. 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). All credible relevant evidence will be considered including evidence regarding courtship, wedding ceremony, shared experiences, and affidavits of persons with personal knowledge of the relationship. *See* 8 C.F.R. § 204.2(c)(2)(vii). U.S. Citizenship and Immigration Services has sole discretion to determine what evidence is credible and the weight accorded such evidence. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). In this case, the petitioner's statements in his affidavit are brief and do not probatively discuss how he first met his wife, their courtship, his decision to marry, their wedding, shared residence or other shared experiences, apart from the abuse. Similarly, the affidavits from the petitioner's friends and pastor are brief and lack substantive information to establish their personal knowledge of the petitioner's marital relationship, apart from the abuse.

Counsel argues that the bona fides of the petitioner's marriage are demonstrated by the director's conclusion that the petitioner was subjected to battery or extreme cruelty by his wife during their

marriage. Counsel claims that a petitioner cannot establish the requisite abuse without entering into the relationship in good faith. Counsel misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. The same or similar evidence may be submitted to demonstrate, for example, abuse and joint residence, but meeting one eligibility requirement will not necessarily demonstrate the others. Consequently, the record does not establish that the petitioner entered into the marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The preponderance of the relevant evidence does not establish 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.