

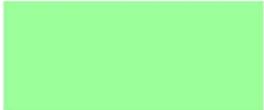


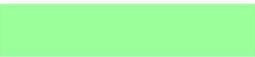
U.S. Citizenship
and Immigration
Services

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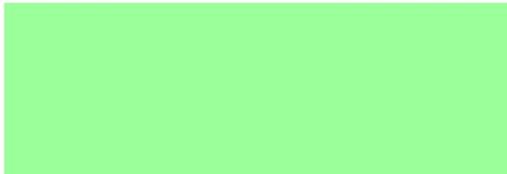
Date: JUL 16 2014

Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)

ON BEHALF OF PETITIONER:

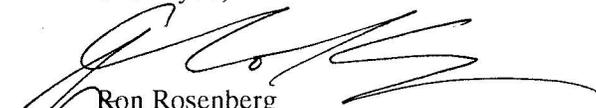


INSTRUCTIONS:

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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii)(I), 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 resided with his wife during their marriage and that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage. On appeal, counsel submits a brief.

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:

(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 . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii)(I) 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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Senegal who last entered the United States on March 24, 2001, as a nonimmigrant visitor. The petitioner married K-B-¹, a U.S. citizen, on March 4, 2008, in [REDACTED], Connecticut. The petitioner filed the instant Form I-360 on November 22, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's joint residency with K-B- and her battery or extreme cruelty. The petitioner, through counsel, 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.

¹ Name withheld to protect the individual's identity.

We conduct 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. Counsel's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Joint Residence

The petitioner stated on his Form I-360 that he resided with K-B- from March 2008 until December 2009, and that the last address at which they lived together was on [REDACTED] Connecticut. However, the applicant's 2008 and 2009 tax returns listed an address in Rhode Island. In the petitioner's initial declaration, he stated that after he and K-B- married, he moved in with his wife into a house that her father owned. In his subsequent declaration in response to the RFE, the petitioner stated that he and his wife have shared several residences. He asserted that his wife had a serious drug problem and when she completed drug rehabilitation in early 2009, he decided that the best way to help her stay sober was to move away from her drug acquaintances in Connecticut, and, therefore, he got an apartment in Rhode Island in order to save their marriage. The petitioner stated that his wife moved into their apartment in Rhode Island, but only stayed for about a month before she returned to Connecticut and started using drugs again. The petitioner indicated that by April 2009, his wife had returned to reside with him in Rhode Island and his 2009 federal income tax return lists the Rhode Island address.

The petitioner failed to specify the dates or addresses of the several residences he reportedly shared with his wife and he did not provide any probative details of their joint residency. For example, he did not describe their house in Connecticut or their apartment in Rhode Island, their shared belongings, or provide any other substantive information regarding his residence with K-B- after their marriage. The petitioner's claims are also inconsistent with other relevant evidence in the record. The petitioner's residence in Rhode Island in 2009 contradicts his Form I-360 which indicates he last resided with his wife in December 2009 in Connecticut. The record also contains a Form I-648 Narrative Record of Sworn Statement of the petitioner, dated May 13, 2009, stating that his wife was unable to attend their immigration-related interview because she lives with her parents in Connecticut and he lives in Rhode Island and is "unable to contact her." This statement contradicts the petitioner's Form I-360 in which the petitioner claimed he lived with his wife from March 2008 until December 1, 2009. In addition, the petitioner stated that after K-B- was released from drug rehabilitation in early 2009, he went and obtained an apartment in Rhode Island and that K-B- moved into the apartment with him. However, he has not explained why his 2008 tax return listed the Rhode Island address, which is also listed on the couple's marriage certificate. The petitioner's statement that K-B- resided with him in Rhode Island in 2009 also contradicts information he provided to [REDACTED] during a psychological evaluation where the petitioner indicated he lived with K-B- in Connecticut until early 2010. On appeal, counsel does not acknowledge these inconsistencies, but simply asserts that the evidence of common residence is voluminous.

Even apart from the unresolved inconsistencies, the remaining relevant evidence does not show that the petitioner resided with K-B-. A letter from the petitioner's father-in-law states he rented a house

to the petitioner and K-B- located on [REDACTED] Connecticut, but he does not provide the dates for which the petitioner lived at the Connecticut address and does not indicate that he ever visited the former couple at their home. An April 17, 2008 letter from a hospital is addressed to the petitioner individually at the Connecticut house, but this letter contains no reference to K-B-. A letter and statements from a bank are jointly addressed to the petitioner and K-B- in Connecticut and support the petitioner's claim that K-B- added him to her account after their marriage, but these documents do not establish that they actually resided together at this address.

Statements of the petitioner's friends also fail to demonstrate that the petitioner resided with K-B- during their marriage. [REDACTED] briefly states that he drove by their house and gave them car rides, but he predominately discusses the effects of K-B-'s drug problems on the petitioner. Mr. [REDACTED] does not describe any visits he had with the couple in their house or other information to establish their joint residency after the couple married. Declarations in the record from [REDACTED] [REDACTED] briefly assert that the couple resided together in Connecticut, but do not describe any interactions with the couple in their home or otherwise explain the basis of their personal knowledge of the couple's joint residence.

The record contains unresolved inconsistencies and lacks detailed and probative information regarding the petitioner's joint residence with his wife during their marriage. The preponderance of the evidence does not demonstrate that the petitioner resided with his wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The petitioner failed to establish that K-B- subjected him to battery or extreme cruelty and counsel's claims on appeal fail to overcome this ground for denial. In his first declaration, the petitioner described how his wife frequently could not be found because she was using drugs. He also described an incident in which he came home and found K-B- had fallen asleep while using drugs, setting the bed on fire. In the petitioner's subsequent declaration in response to the RFE, the petitioner stated he was physically and mentally abused during the marriage and explained that he did not previously describe the abuse because, being from Senegal, a man being abused by his wife is the "ultimate degradation." The petitioner briefly discussed one incident when K-B- slapped him after he refused to give her money for drugs.

In his evaluation of the petitioner, licensed psychologist [REDACTED] stated the petitioner reported that K-B- abused him verbally, physically, sexually, and emotionally, and repeatedly called him names laden with profanity. Mr. [REDACTED] diagnosed the petitioner with Major Depressive Disorder. Three letters from licensed psychologist [REDACTED] described the petitioner's marriage as severely abusive due to K-B-'s violence, calling the petitioner names, and stealing money from him. Mr. [REDACTED] recounted one of the worst incidents as being an attack in which K-B- hit the petitioner under his eye, causing a scar the petitioner still carries with him. Mr. [REDACTED] diagnosed the petitioner with Major Depressive Episode with elements of Posttraumatic Stress Disorder. In addition, the record shows the petitioner was re-evaluated by Mr. [REDACTED] on August 22, 2011. According to Mr. [REDACTED] the petitioner described exactly the same acts of abuse by his wife and continued to have a diagnosis of Major Depressive Disorder.

The petitioner's declarations are inconsistent with the psychological reports. The declarations from the petitioner make no mention of the majority of violent behavior described in the psychological reports. In the petitioner's third and final declaration, he discussed only one incident of being slapped and indicated that it was the only day his wife physically abused him. However, according to the psychological reports, K-B- was physically violent towards the petitioner on numerous occasions in several different ways. Although Mr. [REDACTED] recounted an incident involving a cut under the petitioner's eye that caused a scar, neither Mr. [REDACTED] nor the petitioner himself discusses this episode and no photograph of the injury was submitted.

The petitioner explained that he was embarrassed to discuss in his initial statements that he had been physically abused by his wife because in his culture it is very degrading for a man to be abused by his wife. Mr. [REDACTED] also opined that the petitioner's anxiety interfered with his ability to write, in complete detail, on the first occasion, that he had been slapped by his wife. Nonetheless, neither the petitioner nor Mr. [REDACTED] explained the petitioner's failure to mention any of the other numerous violent acts referenced by Mr. [REDACTED] and Mr. [REDACTED]. The petitioner briefly described his wife slapping him on one occasion, but did not provide probative details regarding this incident or any other act of violence by K-B- against him during their marriage and he has not submitted any further statements or other relevant evidence on appeal.

On appeal, counsel asserts that the petitioner has met his burden of proof because the psychological evaluations document "the extreme cruelty and the resulting psychological condition from which [the petitioner] continues to suffer." The record establishes that the petitioner's wife was addicted to controlled substances and the petitioner described how her drug addiction impacted him and led to the breakdown of their marriage, for which he received psychotherapy. The relevant evidence does not, however, establish that the petitioner's wife's behavior included actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that he resided with his wife after their marriage or that she subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii)(I) 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.

ORDER: The appeal is dismissed.