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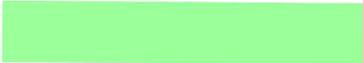
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

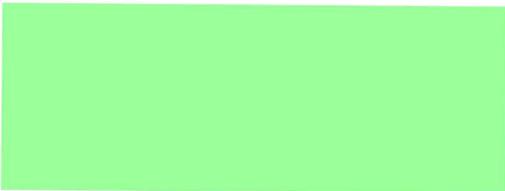


Date: **JUN 16 2014** Office: VERMONT SERVICE CENTER File: 

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 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 under 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 a United States citizen.

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 has failed to overcome this ground for denial on 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 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)(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:

(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.

Facts and Procedural History

The petitioner is a citizen of Jamaica who last entered the United States on December 16, 2007 as a visitor. He married S-L-¹, a U.S. citizen, on April 21, 2009 in Plantation, Florida. The petitioner filed the instant Form I-360 on February 28, 2012. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty, and the shared residence and entry into marriage with S-M- in good faith. The petitioner timely responded with additional evidence, which the director found insufficient to establish that the petitioner entered into marriage in good faith, and denied the petition. The petitioner timely appealed.

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

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). In his initial undated affidavit the petitioner stated that he met S-L- at a mutual friend's summer barbeque in 2008. He stated that he helped S-L- with her children, and that S-L-'s mother encouraged him to marry her daughter. In his second affidavit, the petitioner stated that he was attracted to S-L- at a summer barbeque and a friend introduced him to S-L-. The petitioner stated that he spent time with S-L- at the barbeque and that they exchanged numbers at the end of the night. He recounted that he dated S-L- for a few months, and that in September 2008 they discussed getting married. The petitioner declared that S-L-'s mother wanted him to marry her daughter, and that in January 2009 he proposed to S-L- in the presence of her mother and children. The petitioner declared that in April 2009 they were married at a courthouse, and afterwards he

¹ Name withheld to protect the individual's identity.

moved in with his wife. The petitioner's statements lack further details about his first meeting with S-L-; their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner also submitted bank card statements and photographs. While the bank card statements show the petitioner and his wife's joint address, they are addressed only to the petitioner. The photographs are of the petitioner and his wife together at unspecified occasions and dates, but in the absence of a probative account from the petitioner of his entry into the marriage, the photographs, standing alone, do not establish the petitioner's good faith in marrying his wife.

In his brief, counsel quotes from the petitioner's affidavit regarding the petitioner's mother-in-law's hopes for a marriage between her daughter and the petitioner; however, the desire of the mother-in-law for a marriage to take place does not demonstrate the petitioner's intent when entering into his marriage. Furthermore, the petitioner's characterization of his mother-in-law's "push" to get him to propose on more than one occasion detracts from counsel's assertions that the petitioner married his spouse with the intent to establish a life with her.

Counsel contends that it is illogical for the director to find that the petitioner was abused but his marriage was not bona fide, and that the director should have determined that the evidence of abuse in the marriage (the petitioner's belief that he was the father of his wife's child and his desire for a family) also demonstrated the petitioner's good faith entry into the marriage. 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 entry into a good faith marriage, but meeting one eligibility requirement will not necessarily demonstrate the others. In this case, we have discussed the deficiencies in the evidence, and concluded that the petitioner has not demonstrated by the preponderance of the evidence that he entered into the marriage with his spouse 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 overcome the director's determination that he did not enter into the marriage 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 her 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.