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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

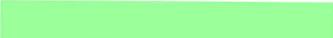


U.S. Citizenship
and Immigration
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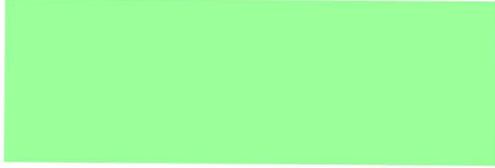


Date: **JUN 18 2014**

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,


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 on the basis of his determination that the petitioner failed to establish that his wife subjected him to battery or extreme cruelty during their marriage or that he entered into the marriage in good faith. On appeal, counsel submits a brief and an affidavit from the petitioner's ex-wife.

Applicable Law

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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, 8 U.S.C. § 1154(a)(1)(J) 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:

(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.

* * *

(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.

* * *

(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.

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

(1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . , by reason of a

marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or

- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). United States Citizenship and Immigration Services (USCIS) may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Where there is reason to doubt the validity of a marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the primary purpose of evading the immigration laws. *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Id.* at 387.

Facts and Procedural History

The petitioner is a citizen of India who entered the United States on August 9, 1999, as a nonimmigrant student. On December 8, 2000, he married his ex-wife, a U.S. citizen, in Las Vegas, Nevada. The petitioner divorced his ex-wife on December 17, 2008. The petitioner subsequently married the mother of his children on December 10, 2012.

The petitioner initially filed a Form I-360 on July 13, 2007. The director denied the petition for failure to establish the requisite battery or extreme cruelty and that the petitioner entered into the marriage in good faith. The director also informed the petitioner that USCIS had concluded that the petitioner entered into a marriage for the purpose of evading immigration laws, and was subject to the provisions

of section 204(c) of the Act. The petitioner appealed, and on June 4, 2009, in a decision incorporated here by reference, the AAO affirmed the director's decision, and again noted that the petitioner was subject to the provisions of section 204(c) of the Act.

The petitioner filed the instant Form I-360 on June 10, 2011. The director subsequently denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty or that he entered into the marriage in good faith. The petitioner timely appealed.

On appeal, counsel reasserts that the petitioner has established his eligibility, and that the director failed to address all of the evidence the petitioner submitted.

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 demonstrate the petitioner's eligibility for the following reasons.

Section 204(c) of the Act and Good Faith Marriage

Beyond the decision of the director,¹ the record contains evidence that the petitioner married his ex-wife in order to evade immigration laws, and thus approval of this petition is barred pursuant to section 204(c) of the Act. In the director's decision on the petitioner's previous Form I-360 filing and in the AAO decision dated June 4, 2009, the director and AAO noted that the petitioner was subject to section 204(c) of the Act because USCIS records indicated that the petitioner's marriage to his ex-wife was entered into for the purpose of evading the immigration laws. Throughout the proceedings, the director and the AAO noted many discrepancies within the information provided by the petitioner. In addition, the petitioner had two children with another woman while married to his ex-wife, and as early as 2007 the mother of his children was described as his "girlfriend" in the psychiatric report he submitted with his previous Form I-360.

On appeal, counsel states that the petitioner married his ex-wife in good faith, but offers no relevant evidence to support this assertion. Although in the petitioner's ex-wife's affidavit she indicates that when she married the petitioner she loved him, and she "kn[e]w that he loved me," she does not explain their relationship in probative detail, such as how she met her husband, their courtship, engagement, wedding, joint residence or any of their shared experiences. The petitioner has not provided sufficient documentation of his good-faith entry into marriage with his ex-wife that would rebut USCIS's section 204(c) finding. Approval of the instant petition is consequently barred pursuant to section 204(c) of the Act.

Battery or Extreme Cruelty

The director and AAO correctly found the relevant evidence submitted below and with the petitioner's prior Form I-360 insufficient to support the petitioner's claims of abuse. In addition to the findings in the previous decisions, incorporated here by reference, we would note that in his entire previous Form I-360 record, neither the petitioner – in multiple statements-, his friends who

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).

provided affidavits, or the psychologist, made any reference to any physical violence of any kind. On appeal, the petitioner submits no new evidence that his ex-wife subjected him to battery or extreme cruelty. The relevant evidence is insufficient to meet the petitioner's burden of proof that his ex-wife subjected him to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner has not established by a preponderance of the evidence that his ex-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.

The Petitioner's Remarriage

Beyond the decision of the director, the petitioner has not established a qualifying relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act due to his remarriage to the mother of his children while this petition was pending. As noted earlier, the petitioner remarried in December 2012 in the State of Arizona while this petition, which was denied on February 8, 2013, remained pending.

Eligibility for Immediate Relative Classification under Section 201(b)(2)(A)(i) of the Act

Beyond the director's decision, the petitioner has also failed to demonstrate his eligibility for immigrant classification based on a qualifying relationship. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. While this petition was pending, the petitioner divorced his ex-wife and remarried. Furthermore, as the petitioner failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Accordingly, he is ineligible for immediate relative classification under section 204(b)(2)(A)(i) of the Act based on his relationship with his ex-wife, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Conclusion

Approval of the instant petition is barred pursuant to section 204(c) of the Act, and the petitioner has failed to rebut the section 204(c) finding and establish that he entered into the marriage in good faith. The petitioner also failed to establish that his ex-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. He has not demonstrated the requisite qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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.