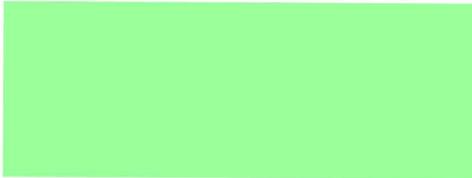


(b)(6)

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

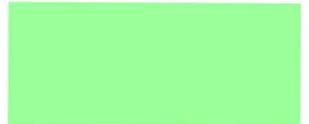


U.S. Citizenship
and Immigration
Services



Date: **MAY 22 2014**

Office: VERMONT SERVICE CENTER File:

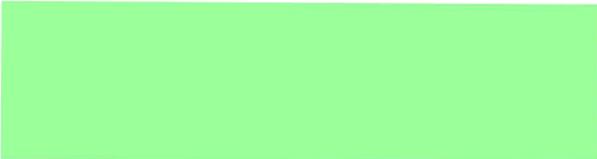


IN RE: Petitioner:



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

ON BEHALF OF PETITIONER:

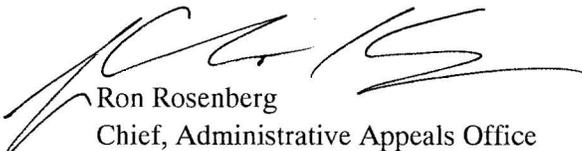


INSTRUCTIONS:

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. The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith and she subjected him to battery or extreme cruelty.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause . . . (ii) or (iii) of subparagraph (B) 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)(B)(ii) 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Jamaica who claims that he entered the United States on November 1, 2001 as a nonimmigrant visitor. The petitioner married a lawful permanent resident of the United States on August 22, 2008 in New York. The petitioner filed the instant Form I-360 on November 20, 2012. The director subsequently issued Requests for Evidence (RFEs) of, among other things, the petitioner's good-faith entry into the marriage and his wife's battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish his eligibility. The director denied the petition and counsel 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 demonstrate the petitioner's eligibility for the following reasons.

Good Faith Entry into Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his declaration, the petitioner briefly recounted that he met his wife at a restaurant. He stated that they went on dates for two years. The petitioner provided no information on his two-year courtship with his wife, their wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner submitted letters from his friends, [REDACTED] and [REDACTED] discussed an argument the petitioner said he had with his wife and attested to the petitioner's good moral character. The petitioner's other friends, [REDACTED] and [REDACTED] also attested to the petitioner's good moral character. None of these individuals offers information to establish that they interacted with the petitioner and his wife or otherwise have any knowledge of the couple's relationship. The director correctly determined that since these letters provide no information demonstrating that the petitioner married his wife in good faith, they are of little probative value.

On appeal, counsel submits another declaration from the petitioner, two psychological evaluations, and letters from his friends, [REDACTED] and [REDACTED]. In the petitioner's second declaration, he stated that he met his wife in the summer of 2004. He recounted that while they were dating he met some of his wife's relatives. The petitioner stated that he moved in with his wife in 2007 and they got married shortly thereafter. He recounted that after their marriage he "saw a change in her behavior almost immediately." The petitioner did not further describe their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner's friends, [REDACTED] and [REDACTED] stated that they interacted with the petitioner and his wife and know that the petitioner loves his wife. However, they do not describe any

visit to the couple's residence or social occasion in detail, or otherwise provide probative information establishing their personal knowledge of the relationship. The petitioner's other friends, [REDACTED] and [REDACTED], attested to the petitioner's good moral character and the alleged abuse, but they do not indicate that they ever interacted with the petitioner and his wife or otherwise have personal knowledge of the couple's relationship.

The psychological evaluations from [REDACTED] are respectively dated December 15, 2011 and August 26, 2013. In Ms. [REDACTED]'s first evaluation, she diagnosed the petitioner with Major Depressive Disorder, Single Episode, Severe, With Mood-Congruent Psychotic Features, Without Intermittent Remission. She stated that during the session, the petitioner recounted that he loved his wife and his marriage was for love. In her second evaluation, Ms. [REDACTED] discussed the petitioner's mental health and did not address his marital intentions. The petitioner's brief assertion during his first psychological evaluation that he married his wife for love fails to provide credible, probative details to establish his good-faith intentions in entering the marriage.

On appeal, counsel asserts that the petitioner's wife kept all of the couple's documentary evidence, such as photographs and bills, and she refused to file joint tax returns, include the petitioner on her health insurance and open a joint bank account. 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). A self-petitioner may instead 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." 8 C.F.R. § 204.2(c)(2)(vii). A full review of the record shows that the petitioner failed to provide any credible, probative evidence of his good-faith entry into the marriage. In his declarations, the petitioner does not probatively describe his courtship with his wife, their wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for his wife during their courtship or marriage. The petitioner's brief assertion during his first psychological evaluation that he married his wife for love fails to provide credible, probative details of his intentions in entering the marriage. Accordingly, the petitioner has failed to establish that he married his wife in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We also find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In the petitioner's first declaration, he recounted that his wife threatened him with a knife, called him names, tried to push him off their bed and told him to sleep on the sofa. He stated that his wife forced him to move out of their apartment. The petitioner's statements do not indicate that his wife ever battered him. His description of non-physical abuse lacks credible, probative details to establish that he was subjected to extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner's friend, [REDACTED] stated that the petitioner told her that he had several arguments with his wife over his financial support of his children from another relationship. She stated that the petitioner also told her that his wife forced him to move out of their home. These statements do not

indicate that the petitioner's wife ever battered him or that her behavior constituted extreme cruelty, as that term is defined in the regulation.

The petitioner submitted a [REDACTED] Incident Report. The report reflects that on December 13, 2010, the petitioner contacted the police about an argument he was having with his wife. The petitioner stated that he had been having marital problems with his wife and they no longer wanted to reside together. The officer indicated that he did not make any arrests because no offense was committed. The director correctly determined that this report fails to demonstrate that the petitioner was subjected to battery or extreme cruelty.

In the petitioner's declaration submitted on appeal he recounted that his wife became upset when he talked on the phone and had visitors at their home. He stated that his wife was jealous, accused him of cheating on her and she became upset when he called his children in Jamaica. The petitioner recounted that while they were dating he called the police because his wife threatened him with a knife. He stated that his wife was arrested after this incident. The petitioner recounted that in 2010 his wife and her family members forced him to leave his marital home. The petitioner's statements do not indicate that his wife ever battered him or subjected to him to extreme cruelty during their marriage, as that term is defined in the regulation. Although the petitioner claims that his wife was arrested for threatening him with a knife, that incident occurred while the couple was dating and not during their marriage. Moreover, the only police incident report submitted does not relate to this arrest.

The letters from the petitioner's friends submitted on appeal similarly do not demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. [REDACTED] recounted that she witnessed the petitioner's wife's verbal abuse. She also stated that she helped the petitioner after his wife put his belongings outside of their home. Ms. [REDACTED]'s description of the verbal abuse consists of a one-sentence statement that does not provide any probative details of the alleged incident. The petitioner's other friends, [REDACTED] and [REDACTED] also indicated that the petitioner's wife abused him. However, they speak in general terms and fail to discuss any particular incident of battery or extreme cruelty, or offer substantive details of their contemporaneous observations of effects of the abuse on the petitioner.

The psychological evaluations submitted on appeal also fail to describe in probative detail any incidents of battery or extreme cruelty. Ms. [REDACTED] stated in her first evaluation that the petitioner recounted that his wife threatened him, called him names, controlled him, manipulated him and she was jealous. In the second evaluation from Ms. [REDACTED], she opined that the petitioner "continues to experience disturbing recollections of the abuse." However, she did not further discuss any particular incidents of battery or extreme cruelty. While we are not questioning Ms. [REDACTED]'s expertise and diagnosis of the petitioner, her evaluations fail to provide any specific information regarding the alleged abuse.

On appeal, the petitioner also submits his medical records from the [REDACTED] Inc., which show that on December 7, 2012, two years after he separated from his wife, the petitioner was diagnosed with benign essential hypertension and hypercholesterolemia. The medical reports do not show a causal connection between the alleged abuse and his conditions.

On appeal, counsel asserts that the petitioner's wife subjected him to financial manipulation and mental and emotional abuse. A full review of the evidence submitted below and on appeal fails to establish that the petitioner's wife subjected him to battery or extreme cruelty. The petitioner's declarations and the statements from his friends do not describe in substantive detail any incidents of battery or extreme cruelty, as that term is defined in the regulation. The psychological evaluations similarly only contain a brief description of the alleged abuse. The police report stated the petitioner and his wife "do not wish to be together any longer" and that no offense was committed. The medical records are dated two years after the petitioner separated from his wife and do not show any causal connection between his medical conditions and the abuse. 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)(B)(ii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that he did not establish the requisite entry into the marriage in good faith and battery or extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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.