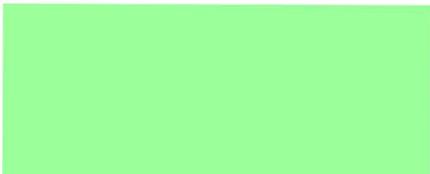


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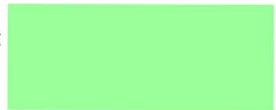
U.S. Citizenship
and Immigration
Services



Date: **MAY 28 2014**

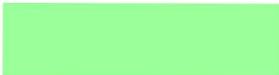
Office: VERMONT SERVICE CENTER

FILE:



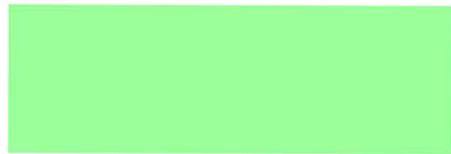
IN RE:

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:

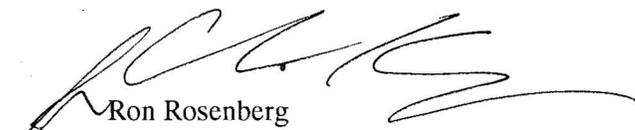


INSTRUCTIONS:

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 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) 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 U.S. citizen.

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

On appeal, counsel submits a statement and additional evidence.

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).

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 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:

(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.

* * *

(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.

* * *

(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.

* * *

(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 Israel who was admitted into the United States on August 27, 2003 as a nonimmigrant visitor. The petitioner married A-S-, a U.S. citizen, on July 6, 2006 in Rockville, Maryland.¹ The petitioner's marriage to A-S- terminated in a divorce on November 23, 2009. The petitioner filed the instant Form I-360 on March 25, 2011. The director subsequently issued a Notice of Intent to Deny (NOID) because the petitioner failed to establish his good-faith entry into the marriage, his residence with his former wife, and her battery or extreme cruelty. The petitioner submitted additional photographs in response to the NOID. The director found the evidence to be insufficient 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). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit, dated November 1, 2010, the petitioner briefly stated that he and A-S- "lived beautiful moments prior and at the beginning of our marriage." The remainder of his affidavit focuses on the alleged abuse. He did not describe how he met his wife, their courtship, engagement, wedding ceremony, joint residence or any of their shared experiences.

The petitioner submitted letters from his friends, [REDACTED] and [REDACTED] which are also of little probative value. The petitioner's friends all attest to knowing the petitioner and A-S- as a married couple and spending time with the couple. However, they do not describe any particular visit or social occasion with the couple in detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

The petitioner also submitted letters from A-S-'s children from another relationship, [REDACTED] and [REDACTED]. Her children recount that the petitioner kept in touch with them and purchased items for them when A-S- was incarcerated for one year. These letters fail to describe the children's personal knowledge of the petitioner's interactions with their mother during and prior to the couple's marriage.

¹ Name withheld to protect the individual's identity.

The petitioner also submitted a letter from Rabbi [REDACTED] of the [REDACTED]. Mr. [REDACTED] opined that the petitioner had a "proper marriage" with A-S-. Mr. [REDACTED] however, does not describe ever having interacted with the couple, or otherwise having personal knowledge of the couple's relationship.

The petitioner submitted the following documentary evidence: Internal Revenue Service (IRS) transcripts showing joint tax returns filed in 2006 and 2007; copies of photographs of the couple; an envelope addressed to the couple; joint cable statements; telephone statements in the petitioner's name only; a flight itinerary for Israel in the couple's names; and a vehicle certificate of title issued in both names. The photographs of the couple are not dated and the envelope is not postmarked. The flight itinerary does not contain the year it was issued and the petitioner in his affidavit does not discuss any plans or trips that he made with A-S- for travel to Israel. The certificate of title is issued to a residential address in Adelphi, Maryland, which the petitioner does not mention in his affidavit. Although these documents are of some probative value, the director correctly denied the petition because they do not establish by a preponderance of the evidence the petitioner's good-faith entry into the marriage.

On appeal, the petitioner submits: a letter from A-S-; additional letters from his friends, [REDACTED] and [REDACTED]; letters from his physician, [REDACTED] M.D.; a letter from A-S-'s sister, [REDACTED] a letter from his landlord, [REDACTED] and a copy of his residential lease.

A-S- stated that she met the petitioner in January 2006 at a restaurant. She recounted that they went on dates and wed on July 6, 2006 at a county courthouse. She stated that she was incarcerated from December 2006 until December 2007 and was "acting abusively" after she was released from prison. Her statement fails to give probative details of her courtship with the petitioner, their joint residence and shared experiences.

In his second letter, Mr. [REDACTED] added that the petitioner brought A-S-'s children to his store to purchase groceries and clothing when A-S- was incarcerated. [REDACTED] similarly stated that she is a grocery store employee and she witnessed the petitioner purchasing groceries for "the family" when A-S- was absent. [REDACTED] stated that when A-S- was incarcerated the petitioner purchased clothing, food and medicine for A-S-'s children. These statements only speak of the petitioner's financial support for A-S-'s children during A-S-'s period of incarceration. They fail to describe the petitioner's good faith entry into the marriage and relationship with A-S-.

The petitioner submitted five letters from [REDACTED] M.D. Dr. [REDACTED] stated in his October 4, 2006 letter that the petitioner was suffering from focal compression of the radial nerve of his hand. In his December 14, 2006 letter, Dr. [REDACTED] stated that the petitioner's hand was better, but he was feeling depressed over his wife's pending incarceration. The remaining three letters from Dr. [REDACTED] discuss the alleged abuse. Dr. [REDACTED]' letters fail to provide any probative information of the petitioner's good-faith entry into the marriage.

[REDACTED] stated that the petitioner has been her tenant since May 2005. She recounted that the petitioner added A-S- to his lease in December 2007 and had her removed from the lease in October 2009. The residential lease submitted by the petitioner is in his name only issued after he separated from A-S-. Ms. [REDACTED] does not indicate that she ever witnessed the couple's joint residence at her property.

A full review of the relevant evidence submitted below and on appeal fails to establish the petitioner's eligibility. As discussed, the relevant documents show that the couple filed joint tax returns, were photographed together, had joint ownership of a car, and had a joint cable account. However, the petitioner has not described how he met his wife, their courtship, engagement, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse. The letter from A-S- also does not describe in probative detail the couple's courtship, joint residence or any of their shared experiences. The petitioner's friends claim that they interacted with the couple, but they do not describe any social occasion or visits to the couple's residence in any detail. A-S-'s children claim that the petitioner financially supported them, but they also do not describe having personal knowledge of the petitioner's relationship with their mother. The petitioner's landlord similarly does not describe ever having seen the petitioner and A-S- at her property, or ever having interacted with the couple. Accordingly, the petitioner has failed to demonstrate that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record also fails to demonstrate that the petitioner resided with A-S-. On the Form I-360, the petitioner stated that he lived with his wife from July 2006 until April 2009 and that their last joint address was an apartment on [REDACTED] in Silver Spring, Maryland. The letter from [REDACTED] indicated that A-S- was added to the petitioner's residential lease for the [REDACTED] apartment in December 2007. The IRS transcripts, joint cable statements, telephone statements, wedding invitation envelope and the couple's driver's licenses all contain the [REDACTED] address. However, in the statement from A-S- that the petitioner submitted as evidence on appeal, she provided that she and the petitioner resided at the [REDACTED] address for only a few months after their marriage and then moved to her home on [REDACTED] in Hyattsville, Maryland. None of the documentary evidence submitted by the petitioner contains the couple's Hyattsville, Maryland address. The certificate of title for the couple's vehicle shows an address in Adelphi, Maryland that is not mentioned in either the petitioner's or A-S-'s statements. The petitioner submitted copies of two photographs that he claims were taken with A-S- at their joint residence, but in his affidavit the petitioner does not specify the dates or address(es) of his residence with A-S-, including the dates of his separation from her while she was incarcerated. He also does not describe their home(s) or shared residential routines. The petitioner's friends also do not describe in probative detail any visit to the petitioner's residence(s) with A-S-. Accordingly, the record does not establish that the petitioner resided with A-S-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We also find no error in the director's determination that A-S- did not subject the petitioner to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his affidavit, the petitioner stated that A-S- did not tell him about her criminal activities with drugs and welfare fraud before their marriage. He recounted that A-S- insulted him, was rude and had a temper before her incarceration. The petitioner stated that after A-S- was released from jail she spent time with her friends, complained, was rude and had an extramarital affair. He recounted that A-S- had "a lot of medical and personal issues." The petitioner's complaint for absolute divorce also provided

that A-S- failed to stay at their home and had an extramarital affair. These statements do not indicate that the petitioner's former wife battered him or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The letter from Rabbi [REDACTED] stated that the petitioner sought support due to marital conflicts. He noted that the petitioner informed him that A-S- had aggressive and unstable behavior. Dr. [REDACTED] stated in his February 4, 2008 letter that the petitioner was depressed because A-S- was abusive, inconsiderate, critical and demanding. These letters are of little probative value because they fail to provide any details of specific incidents of battery or extreme cruelty.

None of the petitioner's friends discuss having any knowledge of the alleged abuse. In the statement submitted on appeal, A-S- recounted that when she was released from prison she started drinking, taking drugs and going out to clubs. She stated that when she returned home she cursed at the petitioner, pushed and rejected his overtures to settle down. Her statement does not probatively describe extreme cruelty in the marriage. Her claim of having "pushed" the petitioner is also not described in any probative detail and it is unclear if she literally or figuratively "pushed" him. The petitioner does not mention any instances of physical violence in his affidavit.

The petitioner also submitted on appeal a psychological evaluation from [REDACTED] Psy.D., dated October 25, 2013. Dr. [REDACTED] opined that "much of [the petitioner's] anxiety was about the uncertainty of his immigration status and the possibility of being forced to return to Israel." He further opined that the petitioner's emotional state can also be attributed to marital abuse. Dr. [REDACTED] concluded that the petitioner has suffered emotional trauma, but does not fully meet the criterion for Posttraumatic Stress Disorder (PTSD). The psychological evaluation does not describe any specific incidents of abuse.

On appeal, counsel asserts that the psychological evaluation and A-S-'s statement established that the petitioner was subjected to extreme cruelty. Counsel fails to articulate, however, how the relevant evidence demonstrates that the behaviors of the petitioner's wife constituted extreme cruelty. The petitioner's statement does not indicate that he was subjected to battery or extreme cruelty, as that term is defined in the regulation. A-S- briefly states that she "cursed" at the petitioner and pushed him, but her one-sentence statement of the alleged abuse fails to provide any probative details. None of the petitioner's friends report having any knowledge of the alleged abuse. The letters from Rabbi [REDACTED] Dr. [REDACTED] and Dr. [REDACTED] similarly fail to describe any specific instances of abuse. Accordingly, the petitioner has not established that his former 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.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner has not established a qualifying relationship with a U.S. Citizen and eligibility for immediate relative classification.² The record shows that the

² A 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*

petitioner and his former wife were divorced on November 23, 2009 before this petition was filed on March 25, 2011. As the petitioner has 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. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (II)(cc) of the Act.

Conclusion

On appeal, the petitioner has failed to establish the requisite entry into the marriage in good faith, battery or extreme cruelty and joint residence. Beyond the director's decision, the petitioner has not established that he had a qualifying relationship with a U.S. Citizen and was eligible for immediate relative classification based upon that relationship. 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.