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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: NOV 03 2014

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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:

[REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 and the petition will remain denied.

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 spouse.

The director denied the petition on the basis of her determination that the petitioner did not marry his wife in good faith and that she did not subject him to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief and additional evidence.

Applicable Law

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 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:

(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.

Facts and Procedural History

The petitioner is a citizen of India who last entered the United States on October 8, 2005, as a nonimmigrant visitor. The petitioner married his wife, a U.S. citizen, on [REDACTED], in Maryland. On May 22, 2007, the petitioner was issued a Notice to Appear in removal proceedings

for remaining in the United States without authorization.¹ The petitioner filed the instant Form I-360 self-petition on May 1, 2012. The director subsequently issued a request for additional evidence (RFE) of the petitioner's good-faith entry into the marriage and that his wife subjected him to battery or extreme cruelty. The director found the petitioner's responses to the RFE insufficient and denied the petition accordingly. On appeal, counsel submits a brief and additional evidence.

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 establish the petitioner's eligibility for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit, the petitioner stated that he met his wife at his friend's restaurant on May 4, 2004. He indicated that he "got to know her" and that he found her attractive. They began dating and took a trip to New York, and went to the beach. He recalled that she called him frequently when he was in India. When he returned from India in October, [REDACTED] his wife asked him to marry her. The petitioner indicated that they were married on December [REDACTED], and that two of his friends and some of her family and friends attended. He stated that after the ceremony they went to dinner. The petitioner indicated that they planned to start a business together, and they would have children after that. The petitioner also generally stated that he married his wife because he loved her. The petitioner did not describe in probative detail how he met his wife, their courtship, engagement, wedding, or any of their shared experiences, aside from the alleged abuse.

The petitioner submitted affidavits from friends. [REDACTED] stated in the exact same language that they knew the petitioner was married in good faith. [REDACTED] also indicated that the petitioner married his wife in good faith. [REDACTED] stated that he knows the petitioner is married and that he lived with his wife. [REDACTED] also indicated that he knows the petitioner is married and lived with his wife. He also stated that he had dinner at their house. These affidavits do not indicate the basis for their professed knowledge of the petitioner's good faith intentions in entering the marriage, and they do not describe the affiants' observations in probative detail or provide any other substantive information regarding the petitioner's interactions and relationship with his spouse prior to and during their marriage. The director correctly concluded that these affidavits were insufficient to demonstrate that the petitioner married his wife in good faith.

The petitioner also submitted a lease in both his and his wife's names, but the lease does not provide any specific information regarding the petitioner's intentions in entering his marriage. The petitioner submitted joint checking account statements, but the statements show a low balance and do not contain sufficient activity to show that both he and his wife used the account. The photographs of the petitioner and his wife at their wedding do not shed light on the petitioner's intentions when entering

¹ The petitioner remains in removal proceedings before the San Francisco Immigration Court and his next hearing is on July 13, 2017.

into the marriage. This evidence, without probative testimony regarding the relationship, is insufficient to establish the petitioner's intentions upon entering into the marriage.

In addition, the petitioner submitted a psychological evaluation in which [REDACTED] a licensed psychologist, indicated that in her clinical opinion, she did not believe the petitioner's marriage to be legitimate because the petitioner described his relationship vaguely and superficially, he did not know much about his wife or her family, he did not speak the same language as his wife, and his wife demanded money from him prior to their immigration interview. To rebut Ms. [REDACTED] comments regarding a language barrier between the petitioner and his spouse, counsel submits on appeal a copy of the petitioner's passport showing that he has previously visited other English-speaking countries, as well as a letter from the petitioner's wife to the petitioner's parents, dated February 2006, indicating that they were going to work their problems out. Evidence of the petitioner's brief visits to English-speaking countries and his wife's letter do not shed any light on the petitioner's intentions when entering the marriage.

On appeal, counsel claims that the director abused her discretion by basing her decision primarily on the information in the psychological evaluation, and by failing to provide an explanation for discrediting the petitioner's affidavit and others' statements. However, in her decision the director did discuss the petitioner's affidavit and the other affiant's affidavits, and counsel has failed to demonstrate that the director abused her discretion. Even disregarding the psychologist's evaluation, the preponderance of the remaining relevant evidence does not establish that the petitioner married his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner failed to establish that his wife subjected him to battery or extreme cruelty. In his affidavit, the petitioner stated that his wife fought with him and brought her son's father to their house. He recalled that his wife drank alcohol and made fun of his religion. The petitioner indicated that prior to their immigration interview, his wife demanded that he pay her \$35,000 and she insulted him and threw cups and plates. He stated that his wife threw him out of the house and ripped his papers and photographs. In his affidavit in response to the RFE, the petitioner added that his wife told him he did not have valid immigration status. The petitioner's brief and vague description of the alleged abusive behavior is insufficient to demonstrate that his wife battered him, and he does not probatively describe behavior that 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 petitioner also submitted statements from friends and a psychological evaluation. [REDACTED] stated that the petitioner's wife was abusive and fought with him, and that she threw him out of the house and ripped his papers and photographs. None of the affiants stated the basis for their knowledge, or described any behavior that constitutes battery or extreme cruelty.

In her psychological evaluation, Ms. [REDACTED] indicated that the petitioner's wife cheated on him, asked him for money prior to their immigration interview, and threw him out. She did not describe any particular incident in detail, nor did she describe any behavior that constitutes battery or extreme cruelty. Ms. [REDACTED] diagnosed the petitioner with depressive disorder caused by his unresolved immigration situation. Ms. [REDACTED] evaluation provided no additional probative information of battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel does not submit any new evidence relevant to any claimed battery or extreme cruelty. As explained above, the relevant evidence does not establish that the petitioner's wife battered him or subjected him to threats of violence, psychological or sexual abuse, or other actions constituting extreme cruelty, as that term is defined 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 not established that he entered into the marriage in good faith or that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.