

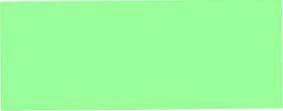
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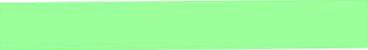


U.S. Citizenship
and Immigration
Services



Date: **NOV 03 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 Acting Director, Vermont Service Center (“the director”), revoked approval of the immigrant visa petition after properly notifying the petitioner, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now again before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted and the motion to reconsider dismissed. The prior decision of the AAO will be affirmed. The petition remains revoked.

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 his United States citizen spouse.

The director revoked approval of the petition for failure to establish that the petitioner entered into the marriage with his wife in good faith. We affirmed the director’s decision and dismissed the appeal. On motion, counsel submits a brief and additional evidence.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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:

(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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Ghana, married S-W¹, a citizen of the United States, on May [REDACTED]. He filed the instant Form I-360 on March 26, 2008 and it was approved on March 18, 2010. The director issued Notices of Intent to Revoke (NOIR) approval of the self-petition on July 24, 2012 and April 8, 2013, and notified the petitioner that his petition was granted in error because after a full review of the administrative record, the petitioner failed to demonstrate that he entered into the marriage with his wife in good faith. The director found the petitioner's timely responses insufficient to overcome her proposed ground for revocation, and she revoked approval of the petition on August 12, 2013. We dismissed a subsequent appeal.

On motion, the petitioner, through counsel submits a brief, an additional statement from the petitioner and photographs. The petitioner's submission does not meet the requirements for a motion to reconsider. The petitioner fails to establish that we did not consider any credible evidence relevant to the petition in violation of the statute or regulations. The petitioner does not cite any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent

¹ Name withheld to protect the individual's identity.

law or agency policy. Nor does he show that our prior decision was erroneous based on the evidence of record at the time. Consequently, the motion to reconsider must be dismissed. See 8 C.F.R. § 103.5(a)(4). However, the submission of a new statement from the petitioner meets the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2) and it will be granted.

We conduct appellate review on a de novo basis. 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. Approval of the petition will remain revoked for the following reason.

Entry into the Marriage in Good Faith

In our February 20, 2014 decision, we determined that the petitioner failed to demonstrate his entry into his marriage in good faith. The relevant evidence was discussed in detail in our prior decision, incorporated here by reference. In summary, we acknowledged that the petitioner submitted joint financial documentation and evidence that he resided with S-W-. However, we found these documents to be insufficient because they contain inconsistencies, show little financial transaction activity, and several documents are dated after the couple separated. In addition, the petitioner did not in his statements describe how he first met S-W- and their courtship, engagement, wedding, joint residence and shared experiences, apart from the abuse. The letters from the petitioner's friends did not describe their interactions with the couple or otherwise establish their personal knowledge of the petitioner's good-faith entry into the marriage. We concluded that when viewed in the totality, the preponderance of the relevant, credible evidence failed to establish that the petitioner's entry into marriage with his wife was in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

In the petitioner's new declaration, he states that he met S-W- in November 2004 when he asked for directions at a bus station. He recounts that they met again for dinner at [REDACTED] and then they started dating. The petitioner states that one month later they became engaged during a visit to a shopping mall. He recounts that during their engagement S-W- sometimes stayed in his apartment. The petitioner states that he and S-W- wed on May [REDACTED] in the [REDACTED] County Courthouse in front of eight friends and family members. He explains that after the wedding his friends and relatives came over to his apartment for a wedding reception and the guests left in the evening. The remainder of his statement focuses on abuse in the marriage. Although the petitioner describes how he first met S-W- and their engagement, he fails to discuss their eighteen-month courtship in probative detail. He also does not discuss their joint residence and shared experiences, apart from the abuse. His description of his wedding reception is also inconsistent with several of the photographs he submits on motion. The captions on several of the photographs state that the images depict the petitioner, S-W- and his sister-in-law eating dinner at a Chinese buffet after the couple's wedding. However, in his declaration the petitioner recounts that after the wedding he, S-W- and their eight wedding guests went to the petitioner's apartment and they had a wedding reception with food he and S-W- had prepared the night before. This inconsistency and the lack of substantive information about the petitioner's courtship detract from the credibility of the petitioner's statements.

The petitioner also submits on motion three additional photographs of himself and S-W- taken at an unspecified location and two other photographs that he states are of him and S-W- at a deli for lunch

and in a parking lot to go to church. As the additional photographs are undated, they are of little probative value in establishing the petitioner's good-faith intentions in entering the marriage.

On motion, the petitioner asserts that we did not contest the veracity of the documents and we only dismissed the appeal because he failed to provide a detailed statement of his good-faith intentions in entering the marriage. The petitioner misconstrues our prior decision as it discussed the numerous discrepancies in the petitioner's evidence as well as his failure to provide a probative description of his good-faith entry into the marriage. The petitioner in his statement on motion still fails to discuss his courtship with S-W-, their joint residence and shared experiences in probative detail and his description of his wedding reception is inconsistent with the captions on several of his photographs. The petitioner's other photographs are undated and therefore of little probative value. Accordingly, the preponderance of the evidence does not establish the petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On motion, the petitioner has not established that he entered into his marriage in good faith. He is therefore 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The motion to reopen is granted. The February 20, 2014 decision of the Administrative Appeals Office is affirmed. Approval of the petition remains revoked.