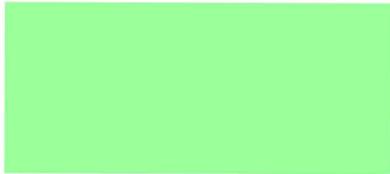


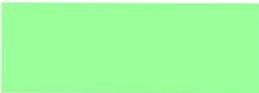
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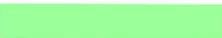


U.S. Citizenship
and Immigration
Services



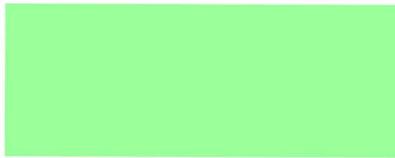
Date: **NOV 05 2014**

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:

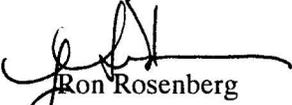


INSTRUCTIONS:

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 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 his former U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with his ex-wife during their marriage and married her in good faith. On appeal, counsel submits a brief.

Relevant Law and Regulations

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 for an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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 explained in 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.

* * *

(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 Gambia who last entered the United States on July 31, 2003, as a nonimmigrant visitor. The petitioner married S-J¹, a U.S. citizen, on September [REDACTED], in [REDACTED] County, Minnesota. The marriage ended in divorce on January 31, 2012. The petitioner filed the instant Form I-360 self-petition on June 28, 2011. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's joint residence with S-J- and his good faith entry into the marriage. Through counsel, the petitioner timely responded to the RFE's with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

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. The evidence overcomes one, but not all, of the director's grounds for denial and the appeal will be dismissed for the following reasons.

Joint Residence

The record shows that the petitioner and S-J- resided together after their marriage. In the petitioner's initial affidavit, dated June 22, 2011, he recounted that S-J- moved into his apartment in [REDACTED] Minnesota, after they got married on September [REDACTED]. He explained that the one-bedroom apartment was too small for them and S-J-'s two children, but they needed to wait until his lease was over in order to move into a bigger apartment. According to the petitioner, when it was close to the end of his lease, the landlord asked them to sign a new lease for a two-bedroom apartment. The petitioner described reminding S-J- about signing the lease in November of 2007 and her refusal to sign it. He stated that the landlord finally asked him to move out because they failed to sign the lease. The petitioner claimed he found a three-bedroom apartment for his family in [REDACTED] but that S-J- soon disappeared. In response to the RFE, the petitioner submitted a second affidavit, dated December 4, 2012, explaining that he lived on [REDACTED], Minnesota, when he met S-J-. He stated that she moved in with him after they married on September 10, 2007, and that she changed her address with the post office. He explained that S-J- refused to sign the lease and that the landlord ultimately filed a trespassing notice against her. The petitioner reiterated that he found another apartment for his family, but that S-J- disappeared.

Documentation in the record supports the petitioner's contention that S-J- moved in with him after they got married on September [REDACTED]. A copy of a change of address form from the U.S. Postal Service confirms that S-J- changed her address to the [REDACTED] address, effective September 17, 2007. A copy of a joint bank account statement from October 3-10, 2007, is addressed to the couple at the [REDACTED] address, and the couple's 2007 joint income tax return listed their

¹ Name withheld to protect the individual's identity.

address as [REDACTED]. In addition, a police report shows that on November 8, 2007, police officers responded to a domestic dispute at the [REDACTED] apartment address. According to the police report, the petitioner and S-J- had an argument about S-J- moving out of the apartment with her three children and the couple getting a divorce. A police report for the next evening, November 9, 2007, shows that police officers again responded to a domestic dispute at the [REDACTED] apartment address. The police report stated that the couple had been arguing, the petitioner was packing up to move out of the apartment, S-J- stated she was glad the petitioner was moving out, and the petitioner left the apartment with his belongings. Furthermore, the record shows that on November 12, 2007, the property manager of the [REDACTED] apartment building issued a Trespassing Notice to S-J- and the police were called. The Trespassing Notice and the police report indicated that S-J- had no other address and, according to the police report, S-J- inquired about retrieving her personal belongings from the apartment.

Therefore, the record supports the petitioner's contention that the couple resided together in his apartment on [REDACTED] after their marriage.² Accordingly, the petitioner has established by a preponderance of the evidence that he resided with his ex-wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. The director's contrary determination is withdrawn.

Entry into the Marriage in Good Faith

The appeal cannot be sustained, however, because the petitioner has not overcome the remaining ground for denial. In his initial statement, the petitioner stated that S-J- lived in his apartment complex and that they were introduced to each other by mutual friends. He briefly recounted that they began socializing, became friends, and then started dating. He stated that he thought she was humble and beautiful, that he loved her, and that they wanted to get married. He briefly described meeting S-J-'s mother, brother, and sister, and that S-J-'s mother was happy her daughter was getting married. According to the petitioner, they got married and moved into his one-bedroom apartment together. He stated that they soon fell into a routine, he cared for her children and participated in all of their activities, and S-J- agreed to go back to school to get her GED. The petitioner described buying her a computer and a car so she could drive herself to school. The rest of his affidavit recounted her mistreatment of him. In response to the RFE, the petitioner stated that when he met S-J-, she was living on [REDACTED] while he was living on [REDACTED]. He explained that after they married, she moved in with him. He also explained that he did, in fact, commingle his finances with S-J-, but because she had drained their bank account, he removed her from the account.

The petitioner did not describe in probative detail the couple's courtship, wedding ceremony, or shared residence and experiences apart from the claimed abuse. In addition, he did not explain why he initially asserted that S-J- lived in his same apartment building and then later stated she lived elsewhere when

² To the extent the director stated that the petitioner sent a money transfer to Wisconsin while S-J- was at her mother's house in order to pay for S-J-'s expenses, the record contains a [REDACTED] receipt, dated September 19, 2007. This receipt shows only that the petitioner sent his mother-in-law \$100. As S-J-'s mother explained in her affidavit, the petitioner frequently sent her money because she helped care for the couple's children. The receipt does not indicate that S-J- was living with her mother at the time or that the couple was not residing together.

they met. In addition, the affidavit from S-J-'s mother, Ms. [REDACTED] stated that she got to know the petitioner approximately three months after he and S-J- married and, therefore, Ms. [REDACTED] had no personal knowledge of the couple's relationship or the petitioner's marital intentions. Although the record includes a joint bank account statement and joint income tax returns for four years, without a more detailed, probative description from the petitioner regarding his marital intentions, the documentary evidence is insufficient to establish his good faith intent to marry. Accordingly, he has failed to establish by a preponderance of the relevant evidence that he entered into marriage with S-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

Beyond the decision of the director, the petitioner did not establish by a preponderance of the relevant evidence that he was battered or subjected to extreme cruelty by S-J- during their marriage.³ In the petitioner's initial affidavit, he recounted that his ex-wife verbally abused him, used illegal drugs, went away for days at a time, and threatened to stop working on his immigration case. He also described how she refused to take her medication for her bipolar disorder, had a baby with another man during their marriage, and was imprisoned for threatening to kill someone. In addition, the petitioner claimed that she once slapped him and that one morning, when he was sleeping, he woke up when S-J- and her siblings rushed into his bedroom and attacked him. He stated he staggered out of the apartment, called the police, and then drove himself to the hospital for treatment. In response to the RFE, the petitioner stated that S-J-'s constant threats and harassment led him to obtain a restraining order against her.

The petitioner's affidavits fail to describe in probative detail any particular incident of battery, contain internal inconsistencies, and conflict with other evidence in the record. For example, although the petitioner initially stated that his ex-wife assaulted him, in his subsequent affidavit, he stated that he got a restraining order against his ex-wife due to her threats and harassment, failing to reference any physical assault. The copy of the protective order in the record, dated May 13, 2011, shows that the petitioner claimed that on March 28, 2011, he and S-J- had an argument about their lease, that she and her family trapped him in the bedroom, and beat him, kicked him, and punched him in the mouth until he bled. Therefore, his claim in his initial affidavit that he was sleeping when S-J- and her siblings attacked him contradicts his contention in the protective order that they were arguing about their lease.

In addition, two Supplementary Reports from the [REDACTED] Police Department, both dated April 14, 2011, indicated that on March 28, 2011, the petitioner told the police officer that there was never a physical altercation between him and S-J-, he was never hit or pushed, and he was not afraid of S-J-. The report stated that although the petitioner wanted to pursue charges against S-J- for domestic assault as a result of the March 28th incident, the police department declined due to inconsistencies in the petitioner's story.

³ 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).

Moreover, hospital records from March 28, 2011, stated that the petitioner initially claimed he was hit in the head, mouth, back, and chest with an unidentified object. The records show that although the petitioner claimed he was bleeding from his mouth earlier during the day, no blood could be seen and although the petitioner's lips were dry and chapped, there were no signs of trauma. The hospital records further stated that there was no evidence of skin abrasions or contusions, no swelling, and "no sign of injury or bodily trauma, which most likely would have showed up if he were abused as he claims." The records indicated that the petitioner "wishe[d] to be admitted voluntarily" and spent the night in the hospital. According to hospital records for the next day, March 29, 2011, the petitioner claimed he was beaten with a crow bar on his head and back; however, there were no bumps or bruises on his head or back and he was discharged from the hospital. Therefore, according to hospital personnel, there was no evidence the petitioner had been physically assaulted as he claimed. Furthermore, the petitioner's claim changed from being hit with an unknown object to being beaten with a crow bar.

Statements from licensed social worker [REDACTED] licensed therapist [REDACTED] and S-J's mother, [REDACTED] are also inconsistent with the petitioner's affidavits. According to Ms. [REDACTED], S-J- and her siblings attacked the petitioner on March 28, 2011, until S-J-'s mother and her husband intervened; however, the petitioner does not allege that Ms. [REDACTED] was present and a statement from Ms. [REDACTED] herself does not mention the incident or her involvement in it. Mr. [REDACTED] stated, without providing additional probative details, that the petitioner was beaten and "nearly killed" by S-J- and her family, a contention the petitioner himself did not make and that is contradicted by hospital records stating the petitioner suffered no injuries.

When viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that S-J- subjected him to battery or any other behavior that included actual or 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). 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.

Conclusion

On appeal, the petitioner has established that he resided with his ex-wife after their marriage. However, he has not established that he entered the marriage in good faith. Beyond the decision of the director, the petitioner has not established that his ex-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.

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.