



U.S. Citizenship
and Immigration
Services

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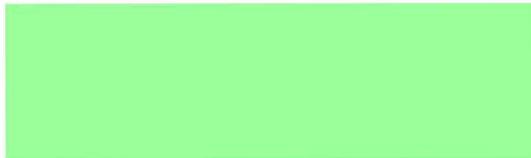


Date: **NOV 17 2014** Office: VERMONT SERVICE CENTER File: 

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:

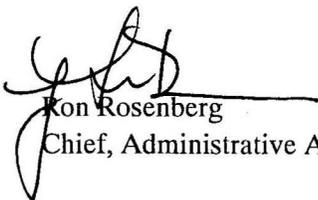


INSTRUCTIONS:

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 U.S. citizen spouse.

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

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 for a self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act 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 or the self-petitioner's child, 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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Peru who last entered the United States on December 26, 2006, as a nonimmigrant visitor. The petitioner married a U.S. citizen on October [REDACTED] in Colorado. The petitioner filed the instant Form I-360 self-petition on November 13, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage; his residence with his wife; and that his wife subjected him to battery or extreme cruelty. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

The AAO reviews these proceedings *de novo*. On appeal, a full review of the record fails to establish the petitioner's eligibility. The evidence submitted on appeal does 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 fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit dated November 6, 2012, the petitioner stated that he met his wife in February, 2008, at his nephew's baptism. His wife was his nephew's Godmother, and he was the Godfather. The petitioner's sister was married to his wife's father. The petitioner stated that he and his wife "hit it off," and he spent ten days in Denver getting to know her. The petitioner returned to his home in California, but they spoke frequently on the phone. He stated that he returned to Denver for two weeks in July, and stayed at his wife's home. He indicated that during this visit, they got engaged, and they married on October [REDACTED]. The petitioner stated that they went to the park and went walking two times each week, and that they went out to eat a few times a week. In his affidavit in response to the RFE, the petitioner added that he did not have traditional documentation to show his entry into the marriage in good faith because the petitioner refused to change her name or put his name on her bills because she did not want to lose the state funding she received. He also indicated that his wife had bad credit so they were unable to open a joint account. 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 also submitted affidavits from family members and friends. [REDACTED] and [REDACTED] indicated that the petitioner and his wife got married and were in love. [REDACTED] stated that the petitioner and his wife were married in good faith and that when they came to her wedding in 2009 they were very happy. [REDACTED] indicated that the petitioner met his wife, they married, and she saw that they were very quiet and happy. She added that she was invited to their wedding but could not attend, and that when she saw them at the petitioner's sister's wedding in 2009 they looked happy. None of the affiants provided any substantive information regarding their observations of the petitioner's interactions and relationship with his wife prior to and during their

marriage, nor did they provide any probative information regarding the petitioner's good faith in entering the marriage. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married his wife in good faith.

The petitioner also submitted photographs of himself and his wife on a few occasions and his marriage license. This evidence, without probative testimony, is insufficient to establish the petitioner's intentions upon entering into the marriage. In his affidavits, the petitioner briefly describes meeting his wife and states that they were married, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. Similarly, the pictures and marriage certificate do not sufficiently demonstrate the petitioner's interactions with or feelings for his wife during their courtship or marriage. When viewed in the aggregate, the relevant evidence does not demonstrate, by a preponderance of the evidence, that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

On appeal, the petitioner submits additional affidavits. Ms. [REDACTED] and Mr. [REDACTED] again state that the petitioner and his wife were in love and married in good faith, but do not explain the basis of their knowledge nor describe the petitioner's interactions with his wife that would lead them to those conclusions. In her affidavit, [REDACTED] indicates that the petitioner met his wife at her son's baptism and that they fell in love. She states that they were very happy and that she attended barbecues at the petitioner and his wife's home every weekend where the petitioner's wife was very affectionate with him, and that the petitioner was like a father to his wife's daughters. She indicated that the petitioner and his wife planned to have children, but does not state the basis for this knowledge. Ms. [REDACTED] also does not probatively describe the petitioner's interactions with and actions towards his wife or how she knew that they were happy and in love. The remainder of the affidavits discuss the petitioner's residence and his wife's alleged abuse.

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(c)(2)(i). Rather, a self-petitioner may 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(c)(2)(vii). The petitioner explained why he was unable to produce documentary evidence of his good faith entry into the marriage. In this case, however, the testimonial evidence submitted does not demonstrate the petitioner's entry into his marriage in good faith. In his affidavits, the petitioner briefly describes meeting his wife and states that they were married, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. The pictures of the petitioner and his wife on a few occasions are not accompanied by any explanation of their significance and do not shed light on the petitioner's intentions when entering into the marriage. The affidavits from the petitioner's family do not state the basis of their knowledge or probatively describe their observations of the petitioner and his wife's interactions. When viewed in the aggregate, the relevant evidence submitted below and on appeal does not demonstrate, by a preponderance of the evidence, that the petitioner 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

On the Form I-360, the petitioner stated that he lived with his wife from October, 2008, until November, 2009, and that their last joint address was on [REDACTED] in Denver, Colorado. In his affidavit, the petitioner indicated that he moved into his wife's house after they were married. He stated that it was a five bedroom house, and that they shared the house with the petitioner's wife's children and her mother. He indicated that he took the petitioner's wife's daughter to school, and then her son to work. The petitioner recalled that sometimes they would go to the park, or walk, and that sometimes the petitioner's wife went to work and her mother cooked. The petitioner did not further describe his and his wife's claimed joint residence or their shared residential routines.

The petitioner submitted affidavits from Ms. [REDACTED] Ms. [REDACTED] Mr. [REDACTED] and [REDACTED] in which the affiants stated that the petitioner and his wife lived together, but did not state the basis of their knowledge or indicate that they had personally visited the petitioner and his wife at their shared residence. In addition, Ms. [REDACTED] stated that the petitioner and his wife lived in [REDACTED] Colorado, while the other affiants indicated that they lived in Denver, Colorado.

On appeal, the petitioner submitted more affidavits. Ms. [REDACTED] and Mr. [REDACTED] again stated that the petitioner and his wife lived together; Ms. [REDACTED] stated that they lived together at the address on [REDACTED] and Mr. [REDACTED] indicated that he picked the petitioner up at the [REDACTED] address. Ms. [REDACTED] stated that after the petitioner and his wife's wedding, they started living together at the address on [REDACTED]. She indicated that she went to the petitioner and his wife's shared residence on weekends and saw the way the petitioner's wife acted towards the petitioner.

Although the petitioner explained why he did not have evidence of joint accounts or bills listing his shared address, he did not explain why he was unable to provide any documentary evidence listing the address he shared with his wife, even if it was only addressed to either him or his wife. The evidence submitted is not sufficient to establish a shared residence during the marriage because the petitioner does not describe his and his wife's home or shared residential routines in sufficient detail, and the affidavits from his friends also do not talk about the couple's marital residence in any detail. Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty. In his affidavit, the petitioner stated that his father-in-law repeatedly fought with his sister and that his wife would take her father's side. He indicated that his wife threatened to divorce him and to report him to "immigration" if he did not talk his sister into staying with her father. The petitioner also believed that his wife was using drugs. The petitioner also stated that on one occasion after the police came to his house, his wife yelled at him, threatened him, and threw a plate at him.

The petitioner submitted a psychological evaluation prepared by [REDACTED] a therapist. Ms. [REDACTED] indicated that the petitioner's wife threw a plate at his face, and threatened to divorce him and call immigration. She stated that the fear of deportation kept the petitioner living in the house with his wife. Ms. [REDACTED] did not describe any particular incident in detail. Ms. [REDACTED] diagnosed the petitioner with post-traumatic stress disorder (PTSD). In her updated report, Ms. [REDACTED] indicated that the petitioner is undergoing treatment for PTSD, and exhibits symptoms of abusive and traumatic events in his relationship, but again fails to describe the abusive and traumatic events to which she refers. While we do not question Ms. [REDACTED]'s expertise as a therapist, her evaluations provided no additional probative information of battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, the petitioner submits affidavits. [REDACTED] indicates that the petitioner's wife threatened to divorce the petitioner and to send him to jail and have him deported. [REDACTED] states that the petitioner's wife threatened the petitioner with divorce and "calling immigration." [REDACTED] recalls that the petitioner's wife threatened not to attend the petitioner's immigration interview and that she would put him in jail or have him deported. She also states that the petitioner's wife made fun of the petitioner and insulted him. [REDACTED] also indicates that the petitioner's wife threatened him with divorce and deportation. In another psychological update submitted on appeal, Ms. [REDACTED] repeats much of her previous reports, and adds that the petitioner's wife threatened to divorce him and to miss their immigration interview and get him deported.

On appeal, counsel contends that the petitioner submitted sufficient evidence to show that he was subjected to battery or extreme cruelty, and that the abuse need not be physical. Counsel is correct that the abuse need not be physical, but the relevant evidence in this case 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). While we do not discount the harm the petitioner's wife caused him, to qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require either battery or extreme cruelty. The petitioner, the affiants, and Ms. [REDACTED] confirm that the petitioner's wife threatened to deport him, get him put in jail, or divorce him, and insulted him, but they do not describe any acts that involve threats of violence or otherwise constitute extreme cruelty. Though the petitioner and the affiants also indicated that the petitioner's father-in-law threatened him and his sister, the petitioner failed to establish that these acts were instigated or condoned by his wife or qualify as acts of battery or extreme cruelty. In addition, when considered in the aggregate, the relevant evidence also fails to establish that the petitioner's wife subjected him to battery during their marriage. The petitioner recounted that on one occasion his wife threw a plate at him, but he failed to provide a probative description of this event or show that the incident resulted or threatened to result in physical or mental injury. *See* 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also did not establish that any other acts were part of an overall pattern of violence. *Id.* 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 marriage with his wife in good faith, that they resided together, or that his wife subjected him to battery or extreme cruelty. 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.