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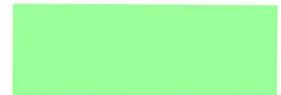
U.S. Citizenship
and Immigration
Services



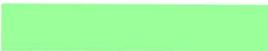
Date: **NOV 19 2014**

Office: VERMONT SERVICE CENTER

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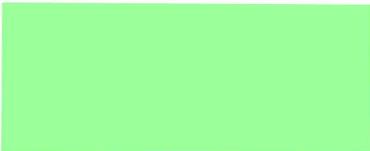


IN RE: Self-Petitioner:



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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“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 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.

The director denied the petition for failure to establish that the petitioner entered into the marriage with his spouse, a United States citizen, in good faith. On appeal, the petitioner through counsel submits a brief and additional evidence.

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 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.

Facts and Procedural History

The petitioner is a citizen of [REDACTED] who last entered the United States on December 30, 2005 as a B-2 nonimmigrant visitor. The petitioner married L-R-¹, a U.S. citizen, on June [REDACTED] in New York. He filed the instant Form I-360 self-petition on October 25, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage. The petitioner timely responded with further evidence the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. On appeal, the petitioner has not overcome the director's sole ground for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner did not establish that he entered into the marriage with his wife in good faith. The petitioner indicated on the Form I-360 petition that during their marriage he and L-R- resided together from July 2010 to June 2011. He submitted below his marriage certificate, a joint lease agreement, a landlord's letter explaining that the lease contains several typographical errors, three rent receipts for an amount inconsistent with the amount he stated that he and L-R- paid for rent,² an income tax return and transcript, a single wireless telephone statement and a mailing envelope addressed to his wife. While these documents show generally that the petitioner was lawfully married to L-R- and resided for a time with her, without a probative account of their relationship, they are insufficient to establish that he married her in good faith. Nonetheless, 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), 204.2(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

¹ Name withheld to protect the individual's identity.

² In the petitioner's first affidavit, he stated he and L-R- paid \$700 monthly toward the \$1,400 total rent while two other roommates split the remaining \$700. The three receipts, for March, April and May 2011, list the petitioner and L-R- jointly and indicate that they paid \$400 total each month.

credible relevant evidence will be considered.” See 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the affidavits of the petitioner and others do not establish his claim of entering into his marriage in good faith because they contain insufficient information regarding his marital intentions.

In his initial affidavit, the petitioner recalled that he first met L-R- in May 2008 at a restaurant where he approached her and they exchanged telephone numbers. He stated that he called L-R- one week later, they saw each other in Central Park, and after another month they met again. The petitioner recalled that he fell in love, they started dating, he proposed marriage on February 25, 2009 because he thought L-R- would be a good wife, and she accepted. He stated that they married on June [REDACTED] in a civil ceremony attended by two friends and a relative. The petitioner recalled that L-R- moved in to his apartment the day after they married and they split the rent with two other roommates. He stated that he and L-R- shopped, cooked, dined and did laundry together and in October 2010 they traveled to California where he met her mother and children. The petitioner recalled that life was good until his working hours were reduced and financial difficulties led to L-R- abusing him. In the petitioner’s second affidavit, submitted in response to the RFE, he did not provide any further probative information concerning his relationship with L-R- or his marital intentions toward her. The petitioner did not describe in detail in either of his affidavits his first meeting with L-R-, their courtship, wedding ceremony, joint residence, or any shared experiences apart from the abuse.

The petitioner also submitted below the affidavits of four friends. [REDACTED] attested to the petitioner’s longtime place of residence and [REDACTED] referred to incidents of abuse in the petitioner’s marriage. While Mr. [REDACTED] stated that the petitioner and L-R- were once a happy couple, he did not describe any particular occasion shared with them, apart from the abuse, and none of the affiants provided further probative information concerning the petitioner’s marital intentions. In addition, the petitioner submitted below copies of his itinerary and airline tickets to California and 21 photographs of him and L-R- together on their wedding day, during the California trip, and on one other unspecified occasion. However, without a probative account of his relationship with L-R- and his marital intentions toward her, these documents and the photographs alone do not demonstrate that the petitioner married his wife in good faith.

On appeal, the petitioner does not submit a supplemental affidavit but does submit affidavits by three friends. [REDACTED] states that he used to “hangout” with the petitioner and L-R- before they married but he does not describe any such occasion. Similarly, [REDACTED] states that he recalls when the petitioner would do anything to make L-R- happy but does not describe any such effort and [REDACTED] states that the petitioner and L-R- would do laundry and shopping together but he does not describe any such occasion shared with them. None of the affiants provide further probative information of the petitioner’s marital intentions or his relationship with L-R-, apart from the abuse.

The petitioner also submits a bank confirmation indicating that he added L-R- as a beneficiary on his savings account on October 6, 2011. The document does not list the balance on the account, when it was established, or any other account activity. He submits an insurance company’s letter indicating that in November 2011, L-R- paid her first month’s premium of \$1.00 on a life insurance policy naming the petitioner as beneficiary. This document is not probative of the petitioner’s marital intentions toward L-R- and it post-dates the couple’s separation, which according to the Form I-360,

was in June 2011. The petitioner also submits several wireless telephone bills addressed to him and L-R- jointly. However, all the bills were issued in 2012, 2013 and 2014 and the petitioner has not explained why L-R- remains on his account years after he stated they separated in June 2011. The petitioner additionally submits mail correspondence addressed individually to him and L-R- at their joint address. While these items show that the petitioner and L-R- resided together for a time, they are not probative of whether he entered the marriage in good faith. He also resubmits photographs previously submitted below, along with two others of himself and L-R- together inside a residence on an unspecified occasion or occasions. As discussed previously, without a probative account from the petitioner about his relationship with L-R- and his intentions in marrying her the photographs alone are insufficient to demonstrate the petitioner's marital intent.

On appeal, counsel asserts that the director failed to properly apply the "any credible evidence" standard of review, however, this claim conflates the evidentiary standard prescribed by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. The statute mandates that U.S. Citizenship and Immigration Services (USCIS) "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This provision prescribes an evidentiary standard. *See* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). This evidentiary standard is not equivalent to the petitioner's burden of proof in this case, which, as in all visa petition proceedings, is the preponderance of the evidence. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). When determining whether the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1).

Counsel further asserts that the director erred in failing to accord proper weight to the petitioner's own affidavits, which counsel describes as "the most essential piece of evidence." In the denial decision, the director addressed the relevant evidence and explained the insufficiency of that evidence to establish the petitioner's eligibility. The petitioner's affidavits and the affidavits of his friends are not sufficiently probative of his intentions when entering his marriage with L-R-

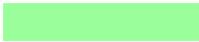
The petitioner has not, below or on appeal, described in detail his first meeting with L-R-, their courtship, wedding ceremony, joint residence, or any shared experiences apart from the abuse. The petitioner's affidavits lack the necessary insights into his reasons for marrying and his feelings about his wife. Consequently, he has failed to overcome this ground for denial by the director. The preponderance of the relevant evidence does not demonstrate that the petitioner entered the marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's sole ground for denial as he has not established that he entered into the marriage with his wife in good faith. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. 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

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NON-PRECEDENT DECISION

been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above stated reasons.

ORDER: The appeal is dismissed.