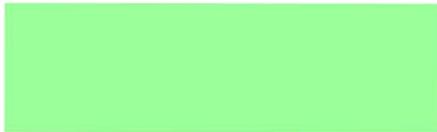




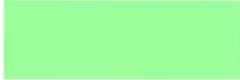
U.S. Citizenship
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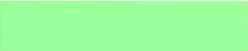
(b)(6)



Date: **OCT 20 2014**

Office: VERMONT SERVICE CENTER

File: 

IN RE: 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:

SELF-REPRESENTED

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, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The director denied the petition and certified his decision to the AAO for review. The AAO affirmed the director's decision and the petition remained denied. The AAO dismissed all of the petitioner's four subsequent motions to reopen and reconsider. The matter is now again before the AAO on a fifth motion to reopen and reconsider. The motion to reopen will be granted, but the petition will remain denied.

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 a United States citizen. The director denied the petition because the petitioner had not established that his former spouse subjected him to battery or extreme cruelty and that he had entered into the marriage in good faith.

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 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:

(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:

Evidence for a spousal self-petition –

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of India who married M-Y-, a U.S. Citizen, on April 15, 2005 in India.¹ He entered the United States on November 25, 2005 as a K-3 nonimmigrant spouse. The couple divorced in New York on September 10, 2008.

The petitioner filed the instant Form I-360 petition on May 14, 2007. On June 17, 2008, the director denied the petition because the petitioner had not established that his spouse subjected him to battery or extreme cruelty and that he had entered into the marriage in good faith. The petitioner filed a subsequent appeal. On May 21, 2009, we issued a decision indicating that we concurred with the director's determination, but we remanded the matter for the director to issue a Notice of Intent to Deny (NOID) in compliance with the former regulation at 8 § C.F.R. 204.2(c)(3)(ii).² The director subsequently issued a NOID for the petitioner's failure to establish that he entered into the marriage with his former spouse in good faith and the requisite battery or extreme cruelty. The petitioner submitted additional evidence, which the director determined failed to overcome the grounds for denial. On December 16, 2010, the director denied the petition and certified his decision to the AAO. On April 18, 2011, we affirmed the director's decision and the petition remained denied.

We dismissed all of the petitioner's four subsequent motions to reopen and reconsider. On the instant motion, the petitioner provides additional photographs from his wedding ceremony and a new psychological evaluation. The submission of a new psychological evaluation satisfies the requirements for a motion to reopen 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. The petition will remain denied for the following reasons.

Entry into the Marriage in Good Faith

In our April 18, 2011 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 electronic message correspondence and greeting cards between himself and M-Y- and photographs of the couple's wedding ceremony. However, the petitioner failed to describe his good-faith intentions in entering the marriage. He did not discuss his courtship with M-Y-, their marriage or any of their shared experiences in probative detail. The letters and statements from his friends and family members also failed to provide any substantive information regarding his good-faith entry into the marriage.

On the instant motion, the petitioner reasserts that we did not properly apply the provisions of the Immigration and Nationality Act and failed to give due consideration to our own memoranda and the

¹ Name withheld to protect the individual's identity.

² This former regulation applies to self-petitions filed on or before June 18, 2007.

petitioner's evidence. The petitioner requests that we reconsider all of his previously submitted documentation. In our prior decisions, the petitioner's evidence was properly evaluated and found to be insufficient to establish his eligibility under the pertinent statute and regulations. The petitioner on the instant motion submits additional wedding photographs, similar to the photographs we previously considered in our prior decisions. He does not submit a new self-affidavit, or any other relevant evidence to establish his good-faith intentions in entering into the marriage. Accordingly, the petitioner has failed to demonstrate that he married his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

In our April 18, 2011 decision, we also determined that the petitioner failed to demonstrate that his former wife subjected him to battery or extreme cruelty during their marriage. The relevant evidence was discussed in detail in our prior decision, incorporated here by reference. In summary, the petitioner did not provide a consistent, credible and detailed account of specific instances of battery or extreme cruelty during his marriage to M-Y-. The statements from the petitioner's family members and friends also lacked details on specific instances of abuse and several of the statements contain nearly identical language, drawing into question their credibility as probative evidence. The psychological evaluation and a letter from the petitioner's therapist did not indicate that the petitioner was battered or subjected to extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

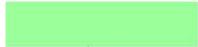
On motion, the petitioner submits a psychological evaluation from [REDACTED] a licensed clinical social worker, dated March 14, 2014. Mr. [REDACTED] diagnosed the petitioner with post-traumatic stress disorder, major depression and an anxiety disorder. He stated that M-Y- and her father "treated the petitioner as a slave" and M-Y- "abused, tortured and forced [the petitioner] to be in the street." However, Mr. [REDACTED] does not, beyond this brief description, further describe these alleged instances of battery and extreme cruelty. He instead mainly focuses on the "extreme hardship" the petitioner would suffer if he were removed to India. The petitioner offers no other evidence in support of his claim. As discussed, in our prior decisions, we properly evaluated the petitioner's evidence and found it to be insufficient to establish his eligibility. Accordingly, the petitioner has failed to demonstrate 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 motion, the petitioner has not established that he entered into his marriage in good faith and was subjected to battery or extreme cruelty during the marriage. 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

(b)(6)



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(BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The motion is granted. The April 18, 2011 decision of the Administrative Appeals Office is affirmed. The petition remains denied.