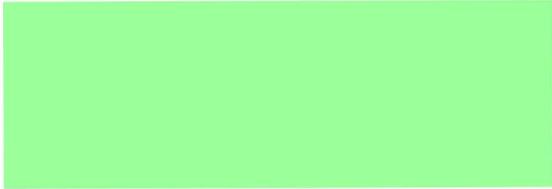




U.S. Citizenship
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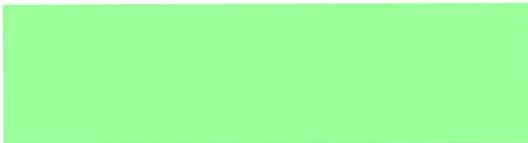


Date: **OCT 24 2014** Office: VERMONT SERVICE CENTER FILE:

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 and the petition will remain denied.

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 spouse.

The director denied the petition on the basis of her determination that the petitioner did not marry his wife in good faith. 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 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 Jamaica who entered the United States on September [REDACTED] as a nonimmigrant temporary agricultural worker. The petitioner married his former wife, a U.S. citizen, on September [REDACTED], in Florida. On December 28, 2010, the petitioner was issued a Notice to Appear in removal proceedings for remaining in the United States without authorization.¹ The petitioner filed the instant Form I-360 self-petition on October 18, 2011. The petitioner and his former wife divorced on March [REDACTED]. The director subsequently issued a request for additional evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage. The director found the petitioner's response to the RFE insufficient and denied the petition accordingly. On appeal, counsel submits a brief and an updated psychological evaluation.

The AAO reviews these proceedings *de novo*. 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 for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit, the petitioner stated that he met his former wife at a Chinese Buffet in June or July of 2008. He indicated that he flirted with her and obtained her telephone number. He called her a week later, and they talked on the telephone for about one month. The petitioner stated that he went on his first date with his former wife to an Italian restaurant, and that he liked her and saw her again one week later at her house where they watched television and she cooked. He told her that his previous wife abandoned him and that his immigration status was at risk. The petitioner indicated that he and his former wife became serious, and saw each other every weekend, going to nightclubs, watching movies, and spending time at his former wife's house. The petitioner recalled that his former wife started to pressure him to marry her, and he agreed. He moved in with her two months before the wedding, and they were married at the courthouse alone. Later on, they celebrated his birthday and the marriage;

¹ The petitioner remains in removal proceedings before the [REDACTED] Immigration Court and his next hearing was scheduled for October [REDACTED]

three of his friends attended. In his affidavit in response the RFE, the petitioner added that he divorced his former wife in March [REDACTED] and that he fell in love with her and did not marry her for immigration purposes. The petitioner did not describe in probative detail how he met his former wife, their courtship, engagement, wedding, or any of their shared experiences after their wedding, aside from the abuse.

The petitioner submitted affidavits from friends. [REDACTED] indicated that she knew the petitioner and his former wife, and that she visited them at their house and observed their interactions with each other. In her affidavit submitted in response to the RFE, Ms. [REDACTED] added that she knew the petitioner loved his former wife because he always talked about her and she knew they were together because she often heard the petitioner's former wife talking in the background when she was on the phone with the petitioner. [REDACTED] stated that he met the petitioner's former wife and that she was very physical with the petitioner, and was always holding his arm. In his affidavit in response to the RFE, Mr. [REDACTED] added that the petitioner and his former wife showed affection towards each other, and that the petitioner's former wife was overly affectionate with the petitioner. These affidavits do not describe the affiants' observations in probative detail or provide any other substantive information regarding the petitioner's interactions and relationship with his former spouse prior to and during their marriage. The director correctly concluded that these affidavits were insufficient to demonstrate that the petitioner married his former wife in good faith.

In his psychological evaluation, [REDACTED] a psychologist, indicated that in 2009, the petitioner met his former wife and was attracted to her because they attended the same church and she seemed to be an observant woman. The psychological evaluation does not provide any other information regarding the petitioner's intentions when entering into his marriage.

The petitioner also submitted photographs of himself and his former wife at their wedding and on a few other unspecified occasions. He submitted a copy of an insurance quote, and the business card from an insurance agent with a handwritten note on the back stating that the petitioner paid two months premium, but the petitioner was unable to provide any statements or other information about the insurance. The petitioner submitted joint checking account statements with low balances and few transactions, and explained that his former spouse took all the money out as soon as he put it in. The statements do not show that the petitioner and his wife both used the account. This evidence, without probative testimony regarding the relationship, is insufficient to establish the petitioner's intentions upon entering into the marriage.

On appeal, counsel submits a letter from Dr. [REDACTED] in which he expresses his opinion that an immigrant victim of domestic violence is unlikely to be able to obtain the types of documentation that the director is requesting, and that he found the petitioner to be a credible witness. In his brief, counsel asserts that the director did not use the correct standard of review and erroneously issued an RFE. He also contends that the director improperly discounted and rejected evidence. On appeal, counsel does not cite any specific relevant evidence that the director did not address and the record reveals no violation of the statute or the regulations in the proceedings below. 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). In this case, however, the testimonial and other evidence submitted does not demonstrate the petitioner’s entry into his marriage in good faith. Although the petitioner explained his lack of additional documentary evidence, in his affidavits, the petitioner briefly describes meeting and dating his former 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 affidavits from friends do not discuss in probative detail the affiants’ observations of the petitioner’s interactions with or feelings for his wife during their courtship or marriage. The psychological evaluation also does not meaningfully describe or discuss the petitioner’s intentions when entering into his marriage. 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 former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not established that he entered into the marriage with his former wife in good faith. 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.