



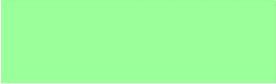
U.S. Citizenship
and Immigration
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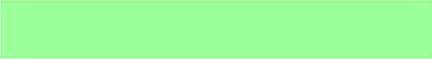
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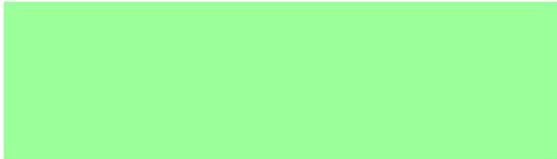
Office: VERMONT SERVICE CENTER

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 a U.S. citizen.

The director denied the petition for failure to establish that the petitioner entered into marriage with his former spouse 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 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:

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.

* * *

(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 entered the United States on June 13, 2008 as a nonimmigrant worker. The petitioner married B-W-¹, a U.S. citizen, on January 20, 2011 in California. The petitioner filed the instant Form I-360 on October 3, 2011. His marriage to B-W- terminated in a divorce on December 17, 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, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

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. Counsel's claims do not overcome the director's determination and the appeal will be dismissed for the following reason.

Entry into the Marriage in Good Faith

We find no error in the director's determination that the petitioner failed to establish his good-faith entry into the marriage. In his first declaration, the petitioner briefly recounted that he and B-W- were initially roommates and then they developed a romantic relationship. He stated that they cooked and had meals together. In his declaration submitted in response to the RFE, the petitioner stated that he and his wife went out to movies, grocery shopping, and they cooked together. The petitioner did not probatively describe his courtship with B-W-. He also failed to discuss their engagement, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse.

In response to the RFE, the petitioner submitted letters from his friends, [REDACTED] and [REDACTED] both stated that they frequently visited the

¹ Name withheld to protect the individual's identity.

petitioner and B-W- at the couple's home. However, neither of them described any particular visit or social occasion with the couple in any probative detail. [REDACTED] indicated that she knows of the petitioner and B-W- as a married couple. Her letter mainly discusses her knowledge of B-W-'s extramarital affair and she did not describe ever having any social interactions with the couple.

The director also accurately assessed the relevant documents submitted below. The petitioner submitted a commercial vehicle certificate of title that reflects that the petitioner and B-W- were lienholders of a taxi. The certificate, however, was issued on August 5, 2011, shortly before the couple separated. The petitioner also provided his and B-W's life insurance applications. However, the applications are unsigned and the petitioner has not shown that he and B-W- actually obtained the life insurance policies. The director correctly determined that the preponderance of the evidence failed to establish the petitioner's good-faith entry into the marriage.

On appeal, counsel asserts that the petitioner and B-W- were interviewed by U.S. Citizenship and Immigration Services (USCIS) regarding the Form I-130 (alien relative petition) B-W- filed on behalf of the petitioner and during the interview they provided consistent and plausible testimony that was not given weight in these proceedings. Although similar, the parties, statutory provisions and benefits procured through sections 201(b)(2)(A)(i) and 204(a)(1)(A)(iii) of the Act are not identical. The petitioner's husband was the petitioner and bore the burden of proof in the prior Form I-130 adjudication, in which he was required to establish his citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also her own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Counsel also misinterprets the good-faith marriage requirement of section 204(a)(1)(A)(iii)(I)(aa) of the Act by conflating it with the fraudulent marriage prohibition of section 204(c) of the Act. On appeal, counsel cites to section 204(c) of the Act and states that under *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990), evidence of a fraudulent marriage must be documented in the file and must be substantial and probative. Counsel further asserts that there is no evidence in the record of "collusion to evade the immigration laws" or that the "the petitioning spouse was paid to marry the beneficiary." The regulations for self-petitions under section 204(a)(1)(A)(iii) of the Act explicate the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). However, the regulations concerning spousal, immediate relative petitions contain no similar evidentiary requirements to establish the bona fides of the marriage except in cases of marriage fraud (8 C.F.R. § 204.2(a)(1)(ii)); marriages entered into when the alien spouse was in proceedings (8 C.F.R. § 204.2(a)(1)(iii)); and marriage within five years of the petitioner's obtainment of lawful permanent resident status (8 C.F.R. § 204.2(a)(1)(i)). In these proceedings, the failure to produce affirmative evidence of the bona fides of a marriage, does not, by itself, indicate that a marriage is fraudulent and the director did not make this determination in the denial notice. Similarly, a lack of evidence that the petitioner and B-W- colluded to evade immigration laws does not by default establish the petitioner's good faith entry into the marriage.

On appeal, counsel contends that it should be presumed that there was a genuine marital relationship because the petitioner established spousal abuse. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Counsel's assertion that good faith marriage should be

presumed because the petitioner established abuse misinterprets the statutory requirements as redundant. Although the same or similar evidence may be submitted to demonstrate, for example, joint residence and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other.

On appeal, counsel also asserts that the petitioner did not have significant joint documentation because his marriage was only eight or nine months long. Given the short duration of the marriage, the petitioner's lack of joint documentary evidence is understandable. 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 credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the petitioner does not provide any detailed, probative information regarding his intentions in marrying B-W-. None of the petitioner's friends discuss in probative detail their interactions with the couple and personal knowledge of the relationship. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence that he 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 failed to establish that he entered into marriage with his former spouse 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.