

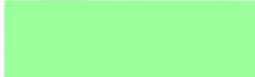
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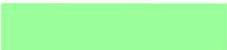
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

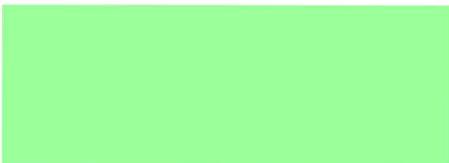


Date: **SEP 22 2014** Office: VERMONT SERVICE CENTER File: 

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:

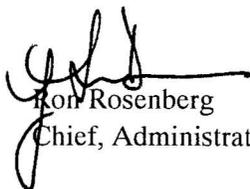


INSTRUCTIONS:

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, that his wife subjected him to battery or extreme cruelty, or that he is a person of good moral character.

On appeal, counsel submits a letter 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).

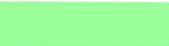
Section 204(a)(1)(J) of the Act further states, in pertinent part:

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 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

(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.

* * *

(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.

* * *

(v) *Good moral character*. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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 the Ivory Coast who last entered the United States on February 25, 2004, as an F-1 student. The petitioner married C-B-, a U.S. citizen, on November [REDACTED] in East [REDACTED], Pennsylvania.¹ The petitioner filed the instant Form I-360 on March 26, 2013. The director subsequently issued Requests for Evidence (RFE) of: the petitioner and his wife's qualifying relationship; the petitioner's good-faith entry into the marriage; his residence with his wife; that his wife subjected him to battery or extreme cruelty; and his good moral character. The petitioner, through counsel, responded to the RFEs 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*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has established that he is a person of good moral character. The director's decision to the contrary will be withdrawn. However, a full review of the record fails to establish the petitioner's eligibility. The evidence submitted on appeal does not overcome the director's remaining grounds for denial and the appeal will be dismissed for the following reasons.

Good Moral Character

On appeal, the petitioner has established that he is a person of good moral character under section 101(f) of the Act. The petitioner provided police clearances and an affidavit in which he indicates that he is a hard worker who hopes to have an opportunity to pursue his education. The petitioner has demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act, and the director's decision to the contrary will be withdrawn.

Entry into the Marriage in Good Faith

The relevant evidence submitted fails to demonstrate the petitioner's entry into his marriage in good faith. The applicant failed to submit a statement or affidavit below describing how he met his wife, their courtship, wedding ceremony, joint residence or any of their shared experiences. The petitioner submitted the following relevant documents: his marriage certificate; a bank statement reflecting the couple's joint account; and pictures of their wedding day. Although the petitioner's marriage certificate shows that he was legally married to C-B-, it does not reflect his intentions in entering into the marriage. Although the bank statement shows that the couple shared a bank account, the statement alone is insufficient to show the petitioner's intentions in entering into his marriage without any testimonial evidence. The director correctly determined that the preponderance of the evidence submitted did not establish the petitioner's good-faith entry into the marriage.

On appeal, the petitioner submits two affidavits. In the affidavits, he indicates that he met his wife in a bar called [REDACTED] and that they became friends and started dating. They engaged in a relationship for about two years until they got married on November [REDACTED] Pennsylvania. Then they moved in together. The remainder of the affidavits discuss the petitioner's wife's alleged abuse. Traditional forms of joint documentation are not required to demonstrate a self-

¹ Name withheld to protect the individual's identity.

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 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 one occasion are not accompanied by any explanation of their significance and do not shed light on the petitioner's intentions when entering into the marriage. No other evidence of good faith marriage was provided on appeal. 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 November 2007 until November 2010 and that their last joint address was on [REDACTED] Pennsylvania. In his affidavits submitted on appeal, the petitioner indicates that he and his wife moved into an apartment on [REDACTED] in December, 2007, and lived there for approximately two years, until December, 2009, before moving to the [REDACTED] address where they lived until 2011. The petitioner did not further describe his and his wife's claimed joint residences or their shared residential routines.

The petitioner submitted W-2 Forms addressed only to him, [REDACTED] bills addressed only to him, bank statements addressed to both the petitioner and his wife at their [REDACTED] address, and checks listing the petitioner and his wife's [REDACTED] address. The petitioner also submitted his driver's license indicating that he lived at the [REDACTED] address when it was issued to him on August 7, 2009. The petitioner submitted a lease signed by both the petitioner and his wife, but not the landlord, indicating that they resided at the [REDACTED] address from November 5, 2007 until November 5, 2008. On appeal, the petitioner submits another lease indicating that the petitioner and his wife were leasing the apartment on [REDACTED] from December 7, 2009 until December 5, 2010, and a change to the lease of their [REDACTED] apartment, dated September 1, 2007, indicating that the petitioner and his wife would be added to the lease for that address. The petitioner also submits a letter from [REDACTED] who states that she lived with the petitioner and his wife on [REDACTED] as well as additional [REDACTED] bills addressed only to the petitioner, and evidence of the petitioner and his wife's joint account.

The evidence submitted on appeal and below fails to establish that the petitioner resided with his wife. Although the petitioner indicated in his affidavits that he and his wife began living together in November 2007 at the [REDACTED] address, this is contradicted by the lease the petitioner submitted that indicated that he and his wife were living in the [REDACTED] address from November 5, 2007 until November 5, 2008. The applicant also indicated that he moved out of the [REDACTED] address in December, 2009; yet his 2010 W-2 Form lists his [REDACTED] address. Similarly, the checks from the

petitioner and his wife's account, which were dated in 2010, contain the [REDACTED] address when the petitioner has testified that he was living at the [REDACTED] address.. The letter from Ms. [REDACTED] does not indicate what dates she purportedly lived with the petitioner and his wife, nor does it provide any detail about their joint residence. 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 and the applicant did not submit sufficient evidence on appeal to overcome this ground for denial. In his affidavit, the petitioner states that his wife started working in a strip club, prostituting herself, and using drugs. He also indicates that his wife abused him physically, hit him when he wouldn't give her money to buy drugs, and called him names. He recalls that on one occasion his wife hit him in the face and he had bruises, so he went to the police station but dropped the charges.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). Here, the petitioner's statements fail to establish that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The petitioner asserts that his wife hit him in the face, but the petitioner did not explain or provide a probative description of this event or any other physical abuse. The petitioner also did not describe in any detail the name calling to which he claims his wife subjected him. The petitioner's statement about his wife's drug use and work as a stripper and prostitute is without any detail regarding how these behaviors impacted him and their marital relationship. Overall, the evidence is insufficient to demonstrate that the petitioner's wife battered him, or that her behavior involved actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). 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 established that he is a person of good moral character. The petitioner has not, however, 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.