

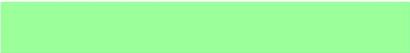


U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **SEP 29 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)

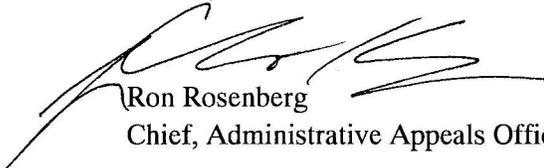
ON BEHALF OF PETITIONER:

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 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 based on the petitioner's failure to establish that he entered into his marriage with his spouse in good faith.

On appeal, the petitioner, through counsel, submits a statement 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 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:

(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, a citizen of Honduras, entered the United States on or about 2002 without inspection by an immigration officer. The petitioner married R-B-, a U.S. citizen, on May 25, 2006. R-B- filed an immigrant visa petition on behalf of the petitioner on February 20, 2007. On May 13, 2008, the petitioner was placed in removal proceedings, and ultimately granted voluntary departure. The petitioner timely departed the United States on July 22, 2009. R-B-'s immigrant visa petition on behalf of the petitioner was approved on August 3, 2009. The petitioner filed the instant Form I-360 self-petition on September 13, 2011. Upon review of the initial submission, the director issued a Request for Evidence (RFE) of good-faith entry into marriage, among other issues. The petitioner timely responded with additional evidence. Based on a review of the entire record of proceeding, the director found that the evidence did not establish eligibility for the benefit sought and denied the petition.

The petitioner, through counsel, subsequently appealed the director's decision. The appeal consists of a Form 1-290B, Notice of Appeal; two photographs; and copies of previously submitted documents.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, including the documents provided on appeal, we find that the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Marriage

The director correctly determined that that the petitioner did not establish that he married R-B- in good faith. In his initial Form I-360 submission, the petitioner provided an affidavit from his uncle, [REDACTED], who stated that the petitioner married R-B- on May 25, 2006, and that he recalls that they were happy in the early days of their marriage. Mr. [REDACTED] described difficulties in the petitioner's marriage, but did not provide any insight into the petitioner's intent in marrying R-B-. The petitioner also provided an affidavit from acquaintance [REDACTED]. In his affidavit, Mr. [REDACTED] attested to meeting the petitioner in early 2007, after the petitioner was already married. He stated that he was surprised to learn in 2008 that the petitioner was married to R-B-.

Neither Mr. [REDACTED] nor Mr. [REDACTED] attested to personal knowledge of the petitioner's relationship with R-B- or his intent in entering the marriage. With the initial submission, the petitioner provided documents indicating that he and R-B- shared an address later in their marriage.

In response to the RFE, the petitioner submitted an undated personal declaration, in which he briefly stated that he married R-B- because she wanted him to move in with her and her family, but her parents insisted that he could not move in unless they were married. He noted his reluctance to get married so soon, and stated that he had "no other alternative." The petitioner did not substantively discuss how he met R-B-, their courtship, wedding, or any of their shared experiences beyond the details of the abuse.

The director correctly found that the petitioner did not demonstrate that he married R-B- in good faith and denied the petition. In the decision, the director noted that the petitioner's personal statement provided insufficient probative details regarding the petitioner's courtship of R-B- and his intentions in marriage. The director further observed that the petitioner declined to provide third party affidavits describing his wedding ceremony or other information that might establish a good faith marriage.

On appeal, counsel states that any evidence that the petitioner could have submitted was either destroyed by R-B- or unavailable because the petitioner currently resides outside of the United States. Counsel indicates that the director failed to consider previously provided evidence, including the two affidavits discussed above, documents related to the petitioner's restraining order against R-B-, documents showing that the petitioner and R-B- used the same mailing address, and a psychological evaluation. On appeal, counsel also submits one unlabeled photograph of the petitioner and his spouse in a restaurant.

The previously submitted documents listed by counsel on appeal do not provide probative information regarding the petitioner's intent in marriage. Counsel did not indicate the significance of the unlabeled photographs submitted on appeal. While the petitioner may have limited access to some traditional forms of documentation because he is outside the United States, section 204(a)(1)(A)(iii) of the Act does not require such traditional forms of joint documentation 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). Here, the petitioner has not provided a probative account of his good faith entry into his marriage with R-B-, nor has he provided third party affidavits attesting to personal knowledge of the petitioner's relationship with R-B-.

The preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with R-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has not overcome the director's ground for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner entered into his marriage in good

faith. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on this ground.

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

ORDER: The appeal is dismissed.