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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: **APR 09 2015**

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:

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, (“the director”) denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on a motion to reopen and to reconsider. The motion will be granted and our previous decision affirmed. The appeal will remain 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 resided with his wife during their marriage, that she subjected him to battery or extreme cruelty, and that he entered into the marriage in good faith. On appeal, we affirmed the director’s decision.

On motion, the petitioner submits supplemental and previously submitted evidence.¹

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 explained in 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.

¹ The petitioner also submitted evidence into the administrative record in connection with a second Form I-360 self-petition. That petition was denied, and a motion to reopen remains pending. We will consider all relevant evidence not previously considered.

(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.

* * *

(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 explained in 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.

* * *

(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.

* * *

(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 the Dominican Republic who entered the United States on or about July 4, 2004, without being inspected, admitted or paroled. The petitioner married M-P-², a U.S. citizen, on [REDACTED] in Puerto Rico.³ The petitioner filed the instant Form I-360 self-petition on September 13, 2010. The director found the evidence insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his U.S. citizen spouse, that he resided with her, and that he married her in good faith, and denied the petition. On appeal, we affirmed the director's decision. The petitioner filed a timely motion to reopen and to reconsider.

The motion to reopen is granted.

We conduct *de novo* review of the proceedings. A full review of the record fails to establish the petitioner's eligibility. Our prior decision will be affirmed for the following reasons.

Joint Residence

On appeal, the record did not establish that the petitioner resided with M-P- after their marriage and on motion the petitioner fails to overcome this ground for ineligibility. The petitioner submits supplemental and previously submitted evidence, including statements from [REDACTED]

On appeal the petitioner submitted two personal statements but failed to provide any probative details about his joint residence with M-P-. Further, the copy of the one-year lease agreement beginning April 7, 2010, for the property at [REDACTED] and the letter from [REDACTED] the landlord for that property, contradicted the petitioner's Biographic Information Form (Form G-325A) which indicated he lived at [REDACTED] beginning in November, 2009.

² Name withheld to protect the individual's identity. In this decision, we will use M-P- to refer to the petitioner's wife, rather than the initials M-R- that we utilized in our previous decision.

³ The record reflects that the petitioner and M-P- divorced on [REDACTED]

On motion, the petitioner resubmits a personal sworn statement and statements from friends and landlords. These statements compound the inconsistencies in the record about the dates of the petitioner's shared residence with M-P-. [REDACTED] another of the petitioner's landlords, states that she rented the property at [REDACTED] to the petitioner, and that M-P- moved into this apartment after the marriage in early 2010. [REDACTED] statement is also inconsistent with petitioner's Form G-325A submitted in the instant proceeding, which indicates that the petitioner lived at [REDACTED] from September 2008 through November 2009, and with the evidence discussed above which indicates that the petitioner resided at [REDACTED] from November 2009 through April 2010. In addition to these inconsistencies, the Form I-360 self-petition at Part.7. Section B indicates that the couple's marital domicile was [REDACTED] from January 2010 until April 2010. The petitioner explains in his statement attached to the Form I-290B, Notice of Appeal or Motion, that he spent 60 days in jail. However, as the claimed incarceration did not begin until after April 2010, this explanation does not resolve any of the inconsistencies.

In her affidavit, [REDACTED] the grandmother of the petitioner's daughter⁵, states that the petitioner and M-P- visited her at her home. [REDACTED] states that M-P- once locked the petitioner out of their home by changing the locks but does not state how she knows this information. In addition, she does not describe the petitioner's joint residence with M-P- in any detail. Likewise, the other affidavits submitted on motion do not provide sufficient probative information about the petitioner's and M-P- claimed marital residence. Accordingly, the preponderance of the evidence on motion does not demonstrate that the petitioner resided with his wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

On motion, the record does not establish that M-P- subjected the petitioner to battery or extreme cruelty. The petitioner submits supplemental and previously submitted evidence, including statements from [REDACTED]

On appeal the petitioner recounted that on April 24, 2010, his wife bit his arm, and that M-P- reported the incident to the police, and accused him of domestic violence, for which he was arrested and jailed. The petitioner submitted photographs of an injury to his arm. The record contained a police report of a domestic violence incident of simple battery on April 24, 2010, naming the petitioner as the aggressor. The record showed that M-P- subsequently initiated a domestic violence charge against the petitioner, and that the case was dismissed. The petitioner's statements failed, however, to provide probative demonstrating that M-P- injured him, subjected him to extreme cruelty and wrongful detention. The assessment from [REDACTED] MSW, generally described incidents of abuse, but did not provide any probative details of specific incidents. The report from [REDACTED] a psychologist, mentioned panic episodes but did not provide any detail of M-P-'s behavior to establish a pattern of verbal abuse. Further, the petitioner did not mention in his personal statements

⁵ The record reflects that the petitioner fathered a daughter with another woman before he married M-P- and has sole custody of the child.

that he suffered panic attacks as noted by [REDACTED] or that he was subjected to the abuse as described by [REDACTED]

On motion, [REDACTED] friends of the petitioner and M-P-, each describe that M-P- humiliated and yelled at the petitioner in front of his friends and that she wanted to see the petitioner imprisoned. [REDACTED] the grandmother of the petitioner's daughter, states that M-P- frequently provoked the petitioner, and had him detained for false allegations of domestic violence. [REDACTED] one of the petitioner's landlords, indicates that M-P- had a temper and on one occasion the police had to intervene. Similarly, [REDACTED] a friend and co-worker, states that things were bad between M-P- and the petitioner, and that M-P- was the source of many problems for the petitioner. None of these witnesses provides sufficient probative detail to establish that the petitioner's wife battered or verbally abused the petitioner and had him arrested and jailed on false allegations. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner's 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.

Entry into the Marriage in Good Faith

The relevant evidence on motion fails to demonstrate the petitioner entered into marriage in good faith. On appeal, we noted that aside from stating in his initial sworn statement that he and M-P- were in a close relationship for three years before they married, the petitioner failed to describe the courtship, wedding ceremony, shared residence and experiences, or his intentions in marrying M-P-. See 8 C.F.R. § 204.2(c)(2)(vii). On motion, the petitioner resubmits a personal statement asserting that his wife abused him, but does not address his marital intentions and submits no other, relevant additional evidence. None of the additional witness statements submitted on motion indicates that he or she attended the wedding ceremony, or gives probative details about the petitioner's courtship, shared residence or marital experiences. Therefore, the petitioner has not demonstrated that he entered into marriage with M-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On motion the petitioner has not established that M-P- subjected him to battery or extreme cruelty during their marriage, that he resided with his wife after their marriage, and that he entered into the marriage in good faith. He is consequently ineligible for immigrant visa classification under section 204(a)(1)(A)(iii) of the Act and the appeal remains dismissed.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (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 AAO's decision, dated August 8, 2014, is affirmed. The petition remains denied.