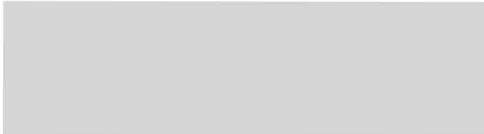




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 12 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director, (the director) denied the petition. 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 resided with his spouse and entered into marriage with his spouse in good faith. The director also determined that the petitioner did not establish that he was subjected to battery or extreme cruelty by his spouse during their marriage. On appeal, the petitioner 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:

(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 . . . 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 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.

* * *

(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 Dominican Republic who first entered the United States on March 31, 1995, as a B-2 nonimmigrant visitor. The petitioner married G-G-¹, a U.S. citizen, on [REDACTED], in [REDACTED], Massachusetts. The petitioner filed the instant Form I-360 self-petition on July 21, 2014. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into his marriage, residence with his wife, and the requisite abuse. The petitioner responded to the RFEs with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely filed an appeal.

We review these proceedings *de novo*. A full review of the record, including the brief submitted on appeal, fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reasons.

Joint Residence

The director correctly determined that the petitioner failed to establish that he resided with G-G- during their marriage based on the relevant evidence submitted below. The petitioner stated on his Form I-360 self-petition that he resided with G-G- from March 1997 to August 2001 and that they last resided together on [REDACTED] Street. In his January 14, 2014 affidavit, the petitioner stated that he married G-G- on [REDACTED] and is still married to her although they have been separated for nine years. He did not further discuss their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with G-G- during their marriage.

The affidavits from the petitioner's friends, [REDACTED], [REDACTED] and [REDACTED] likewise did not demonstrate the petitioner's joint residence with G-G-. In her affidavit, [REDACTED] stated that she attended the petitioner's wedding ceremony and reception.² She indicated that the petitioner and G-G- lived at the [REDACTED] Street address from March 1997 to August 2001 and that she "spent a lot of beautiful and bad times with the couple" during this period. [REDACTED] stated that he met the petitioner G-G- one year before they were married, attended the wedding, and socialized with the couple from April 1997 to January 1998. [REDACTED] stated that the petitioner met G-G- at [REDACTED] house and that the petitioner and G-G- later lived together at the [REDACTED] Street residence from March 1997 to August 2001. The affiants did not describe any specific residential visits, observations, or otherwise provided any probative details regarding the couple's living arrangements.

¹ Name withheld to protect the individual's identity.

² [REDACTED] submitted two identical affidavits dated January 14, 2014, and December 2, 2014.

On appeal, the petitioner asserts that he resided with G-G- and that this was corroborated by his affidavit and the third party affidavits. In his affidavit, however, the petitioner did not describe his home with G-G- or their shared residential routines in any detail, nor did he provide any other substantive information sufficient to demonstrate that he resided with G-G- after their marriage. The affidavits from his friends were similarly worded and also did not provide any probative details regarding the couple's living arrangements. Accordingly, the record does not establish by a preponderance of the evidence that the petitioner resided with his wife during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner did not establish that he married G-G- in good faith. The petitioner submitted a personal affidavit and affidavits from friends [REDACTED], [REDACTED] and [REDACTED]. In his affidavit, the petitioner stated that, in the beginning of their relationship and marriage, it "was all happiness and then it turned to hell" when G-G- started drinking heavily. He further stated that he married his spouse in good faith but that G-G-, while in a drunken state, burned their joint property evidence that would have better established his good faith intention. The petitioner did not further describe their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the claimed abuse.

In her affidavit, [REDACTED] stated that she can attest to the "beautiful family relationship" between the petitioner and G-G-. She described the couple as "well united bringing happiness home to each other." [REDACTED] also stated that he can attest to the "beautiful family relationship" between the couple. [REDACTED] stated that the petitioner met G-G- at his house in [REDACTED] Massachusetts and they seemed to be happy. He further stated that the petitioner and G-G- had a "beautiful marriage relationship" and were always together. None of the affiants described their interactions with the couple in any probative detail. On appeal, the petitioner asserts without providing additional, substantive information, that he married G-G- in good faith. Accordingly, a full review of the evidence in the record, including the petitioner's brief submitted on appeal, does not establish 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.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner did not establish that G-G- subjected him to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavit, affidavits from friends, a letter from the [REDACTED] a mental health assessment and status of treatment by [REDACTED] and a psychological evaluation report from [REDACTED]

In his affidavit, the petitioner stated that his marriage to G-G- became problematic approximately one year after the wedding when G-G- began to drink heavily. He recounted that she became abusive towards him when drunk, called him names, hit him with no provocation, and threatened to sabotage his immigration status. The petitioner did not cite to specific examples or incidents of abuse, or provide

any probative details about G-G-'s treatment of him. In her affidavit, [REDACTED] stated that the petitioner and G-G- were happy until G-G- became an alcoholic. [REDACTED] described one incident on April 7th (the year was not specified) when the petitioner was at a party and G-G- showed up very intoxicated. [REDACTED] recounted that G-G- was verbally abusive towards the petitioner and hit him on the back. [REDACTED] also recalled the incident that occurred on April 7th. He stated that G-G- showed up intoxicated at an anniversary celebration and hit the petitioner on the back. Neither [REDACTED] nor [REDACTED] provided further probative details about this incident or about any other specific incident of abuse. [REDACTED] stated that one year after the petitioner and G-G-'s wedding, G-G- started acting strangely towards the petitioner. He stated that he saw G-G- yell at and call the petitioner names on a daily basis. [REDACTED] did not, however, describe any specific incident or otherwise provide substantive information about G-G-'s treatment of the petitioner. In addition, while two of the affidavits of his friends recount the same specific incident of alleged abuse, the petitioner's affidavit is silent regarding this incident. As such the petitioner's affidavit and the affidavits of his friends do not demonstrate that G-G- ever battered the petitioner, or that her behavior involved 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 letter from the [REDACTED] the psychological evaluation from [REDACTED] and the mental health assessment from [REDACTED] likewise did not provide probative details about the claimed abuse. In his letter, [REDACTED] stated that he met with the petitioner for twelve counseling sessions from September 2011 to March 2012. He stated that the petitioner reported that G-G- was an alcoholic who became abusive when drunk. His letter repeats the information contained in the petitioner's affidavit but does not add any substantive information regarding G-G-'s treatment of the petitioner. [REDACTED] relayed that the petitioner spoke in detail about G-G-'s abusive behavior and concluded that the petitioner developed a Major Depressive Disorder as a result of undergoing significant abuse. Other than to report what the petitioner stated during their interview, [REDACTED] did not state the basis of his professional assessment. While we do not question [REDACTED] professional expertise, his assessment conveys the petitioner's statements during his interview with him and as reflected in the petitioner's affidavit, and does not provide further, substantive information regarding the claimed abuse. [REDACTED] indicated that the petitioner successfully completed seven mandatory sessions for psychotherapy. He noted that the petitioner suffers from depressed mood, insomnia, and other related symptoms, but did not state that these symptoms were caused by or connected to G-G-'s abusive behavior towards the petitioner.

On appeal, the petitioner does not provide additional evidence regarding G-G-'s treatment of him other than to reassert that she was abusive. The evidence submitted below does not contain sufficient, probative information to establish the claimed abuse. Accordingly, the petitioner has not established that G-G- 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 not demonstrated that he resided with and entered into marriage with his spouse in good faith and that she battered or subjected him to extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also* *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 and the petition remains denied.

ORDER: The appeal is dismissed.