U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-S-

DATE: DEC. 4, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360 PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

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.

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 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.
>
> * * *
>
> (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 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, school records, hospital or medical records, 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.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Uzbekistan who claims that he entered the United States in New York on January 1, 1999, as a nonimmigrant visitor. The Petitioner wed M-L-N-[1], a U.S. Citizen, on 2006, in Kentucky. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on June 4, 2013. The Director subsequently issued a request for evidence (RFE) of, among other things, the Petitioner's joint residence with M-L-N-, entry into the marriage in good faith, and the requisite battery and/or extreme cruelty he was subjected to during the marriage. The Petitioner timely responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility.

The Director denied the Form I-360 because the Petitioner did not establish that he entered into the marriage in good faith, resided with his U.S. Citizen spouse, and that she subjected him to battery or extreme cruelty. The Petitioner timely appealed the Director's denial of the Form I-360. On appeal, the Petitioner submits a brief.

We review these proceedings *de novo*. Upon a full review of the record, the Petitioner has not overcome the Director's grounds for denial. The appeal will be dismissed for the following reasons.

III. ANALYSIS

A. Joint Residence

The Director correctly determined that the Petitioner did not establish that he resided with M-L-N-. On his Form I-360, the Petitioner stated that he resided with M-L-N- from April 2006 until March 2008, and that their last joint residence was on Ohio. The Petitioner submitted a personal affidavit, and statements from his friends and a neighbor as evidence of his joint residence. In his May 2013 affidavit the Petitioner briefly recounted that he met his spouse in 2005, right before the holidays and they wed on 2006. The remainder of the Petitioner's affidavit recounted his spouse's alleged abuse. The Petitioner's affidavit did not describe his joint residence with his spouse in any probative details. He did not provide information about their shared belongings, and residential routines, apart from the alleged abuse. Nor did he specify the dates or

[1] Name withheld to protect the individual's identity.

address(es) of his residence with his spouse. Furthermore, the Petitioner's I-360 reflected that he and his spouse last resided together in March of 2008. This is contrary to the Petitioner's own affidavit, which states that in October of 2007, he came home to find all of his personal belongings missing and his spouse had moved out.

The Petitioner provided statements from his friends, and his neighbor, , to substantiate his claim of joint residency. The Petitioner's neighbor, stated that she met the Petitioner and his spouse when they moved into the apartment complex in where she resided. Although her statement is of some probative value, it does not overcome the deficiencies in the Petitioner's evidence. In his statement recounted that the Petitioner and his spouse resided together in an apartment building in Ohio, but he did not indicate that he ever visited the couple at their residence. The Petitioner's friends, briefly stated that they helped the Petitioner and his spouse move into the apartment in , but their statements focus primarily on abuse in the relationship. The Petitioner's affidavit also contradicts statement, which indicates that it was in February of 2008, not October of 2007 that the Petitioner came home to find that his spouse had taken all his personal belongings and moved out of their apartment. also stated in his affidavit that in late February of 2008, it was the Petitioner, not his spouse, who left the marital residence after his spouse sold his valuables and vandalized his property.

On appeal, the Petitioner asserts that he has submitted sufficient evidence to establish joint residency. The Petitioner contends that the Director should not apply the strict rules of evidence to his case because adjudication of immigration petitions are considered administrative proceeding, and the preponderance of the evidence standard should be applied. The Petitioner asserts that under the preponderance of the evidence standard he has met his burden. The preponderance of the evidence standard requires a petitioner to demonstrate that his or her claims are "probably true" or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The determination of "truth" and its probability shall be based on the factual circumstances of each individual case and an examination of all the evidence "for its own relevance, probative value, and credibility, both individually and within the context of the totality of the evidence." *Id.* Where U.S. Citizenship and Immigration Services (USCIS) can articulate a material doubt regarding the petitioner's eligibility, the agency may either request additional evidence or deny the application if the material doubt indicates that the claim is probably not true. *Id; see also* 8 C.F.R. § 103.2(a)(8)(iii).

For self-petitioning abused spouses and children, the statute further prescribes an evidentiary standard, which mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act; *see also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard is not equivalent to the petitioner's burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." *Id.* Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof.

Here, the Petitioner asserts that he was responsive to the Director's requests for additional evidence and that his affidavits, statements from his friends and a neighbor, his wedding photographs and photographs depicting an outing with friends, are sufficient to demonstrate by a preponderance of the evidence that he resided with his spouse. However, the Petitioner's affidavit and the statements from his friends do not provide any substantive information relating to the Petitioner's claim of joint residence with his spouse. Although the statement from the Petitioner's neighbor provided some probative details, the statements from Petitioner's friends were of a general nature and inconsistent with the Petitioner's own statement. Similarly, the photographs showing the Petitioner and his spouse socializing do not identify when and where they were taken and without probative testimony, are insufficient to establish the Petitioner's marital residence with his spouse. Accordingly the Petitioner has not established by a preponderance of the evidence that he resided with M-L-N- after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Good-Faith Entry into the Marriage

The Director also correctly determined that the Petitioner did not establish that he married M-L-N- in good faith. In his affidavit, the Petitioner stated that he met his spouse in November of 2005 and on 2006, they wed. The Petitioner stated that he was happy and excited to have found an American woman with whom he could spend the rest of his life. The remainder of the affidavit focuses on the alleged abuse in the marriage. The Petitioner did not describe in further detail their courtship, engagement, wedding ceremony, shared residence, or any experiences with his spouse apart from the abuse.

The statements from the Petitioner's friends, and his neighbor, also do not contain any probative details regarding the Petitioner's intention in marrying his spouse. The Petitioner's friends all attest that they have known the Petitioner for a number of years and interacted with the Petitioner and his spouse during their marriage. In addition, the statements from Petitioner's friends indicate that they often socialized with Petitioner and his spouse at the couple's residence and over time observed a change in the couple's relationship. Despite their claims of making frequent visits to the home and socializing with Petitioner and his spouse, the Petitioner friends' statements do not describe any particular visit or social occasion in detail, or otherwise provide detailed information establishing their personal knowledge of the relationship, apart from the alleged abuse. stated that she saw the Petitioner and his spouse at their apartment complex. Her statement, however, mainly recounts her observations of the alleged abuse and fails to provide any substantive information about the Petitioner's marital intentions, or her interactions with the couple.

On appeal, the Petitioner asserts that the Director's determination that his affidavits lack probative details regarding his good-faith entry into the marriage with M-L-N- goes against the weight of the evidence and that he provided sufficient probative evidence to establish entry into the marriage in good faith. He contends that the Director failed to clearly articulate the reasoning behind the decision. He does not, however, address the deficiencies in the relevant documents that were noted by the Director. In his affidavit, the Petitioner does not describe how he first met his spouse, their

courtship, wedding ceremony or their shared residence and experiences, apart from the alleged abuse. The record also contains two wedding photographs and three wedding greeting cards, and four other photographs taken on the same day of an unspecified occasion. The photographs have no captions and the Petitioner does not explain the circumstances in which they were taken. In addition, the statements from Petitioner's friends do not discuss their interactions with the couple and demonstrate their knowledge of the Petitioner's good-faith intentions in entering the marriage. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner entered into marriage with M-L-N- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

C. Battery or Extreme Cruelty

The Director also correctly determined that the Petitioner did not establish that M-L-N- subjected him to battery or extreme cruelty. In his affidavit, the Petitioner stated that his spouse physically and emotionally abused him. The Petitioner recalled that his spouse became abusive shortly after their marriage when she began using alcohol and drugs. The Petitioner stated that when he confronted his spouse about her drug use, she became verbally and physically abusive. The Petitioner recalled that from April 2006 until early 2007 he asked his spouse to file an immigrant petition for him, but she never followed through with it. He also recalled that his spouse made constant and frequent monetary demands on him. The Petitioner's statements lack probative, credible details of any specific instances of battery or extreme cruelty. In addition, the Petitioner's affidavit indicated that in October of 2007, he came home to find that his personal belongings were missing and that his spouse had moved out. This is inconsistent with the information provided on his Form I-360, which reflects that he last resided with his spouse in March of 2008. The Petitioner's affidavit is also inconsistent with statements from his friends, which indicate that the Petitioner came home in February of 2008 and discovered that his spouse had vandalized and sold his property. Further, the statement from the Petitioner's friend, [redacted] indicated that in February of 2008, the Petitioner came home, found that his property had been sold and vandalized, and that the Petitioner, not his spouse, "fled the marital home."

As discussed, the Petitioner submitted affidavits and statements from friends and a neighbor to support his claim of abuse. [redacted] indicated that she saw the Petitioner's spouse on many occasions pick up objects to throw and hit the Petitioner. However, she did not provide details of any specific incidents of abuse. [redacted] indicated that on numerous occasions he heard the Petitioner's spouse screaming and yelling at the Petitioner. He also recounted that in September of 2007, he was attending a cookout in a public park with the couple, when the Petitioner's spouse picked up a piece of firewood and hit the Petitioner in the forehead. [redacted] indicated that he also observed the Petitioner's spouse verbally abusing the Petitioner. He recalled that there were many occasions where he witnessed the Petitioner's spouse physically strike the Petitioner. [redacted] recalled that he once overheard the Petitioner's spouse confess to a man at a park that she was deliberately "attacking" the Petitioner. He also recalled that at a cookout in September 2007, the Petitioner's spouse struck the Petitioner with a piece of firewood on his forehead and she assaulted the Petitioner on another occasion in September of 2007. Although the Petitioner's friends recounted witnessing M-L-N- strike the Petitioner with a piece of firewood during an outdoor picnic event, in his initial affidavit, the Petitioner did not discuss this incident. On appeal, the Petitioner refers to his friends' statements and describes this incident as the

"most damaging attack" that he suffered, but he does not provide his own account of the incident. The Petitioner submitted an undated photograph of a scar on his forehead, which he claims is the result of this incident. However, without probative testimony from the Petitioner, the photograph does not establish that the Petitioner was battered by his spouse.

On appeal, the Petitioner asserts that he was subjected to battery and extreme cruelty as defined in the regulation, but the Director failed to apply the proper weight to the evidence of violence committed against him. As discussed, the determination of what evidence is credible and the weight to be given that evidence "shall be *within the sole discretion* of the Service." Section 204(a)(1)(J) of the Act. In compliance with the statute and regulations, the Director addressed all the relevant evidence submitted by the Petitioner below, accurately assessed its weight and credibility and explained why it did not establish battery or extreme cruelty. *See* Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i) (mandating the agency's consideration of "any credible evidence relevant to the petition," but reserving the determination of what evidence is credible and its weight to the agency's "sole discretion.").

A full review of the evidence submitted below and on appeal does not establish that the Petitioner has been battered or subjected to extreme cruelty as that term is defined by the regulation. The Petitioner asserts that he provided sufficient evidence to establish that he was a victim of domestic violence under Ohio law, but does not further address the Director's determination that his affidavit was of a general nature, and lacked specific details or descriptions of the incidents of the alleged abuse. In addition, the Petitioner asserts that the Director discounted his claim of abuse because he is a man. We find no evidence of gender bias against the Petitioner in the Director's decision. The Petitioner submitted affidavits and statements from friends and a neighbor that discuss incidents the Petitioner does not mention in his own affidavit. As discussed, the photograph of the scar on the Petitioner's forehead, without probative testimony from the Petitioner, does not establish that he was battered by his spouse. On appeal, the Petitioner does not provide additional evidence regarding the alleged abuse. Accordingly, the Petitioner has not established that M-L-N- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

IV. CONCLUSION

On appeal, the Petitioner did not establish that he resided with his spouse, that he married her in good faith, and that he was subjected to battery or extreme cruelty during their marriage. 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 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 appeal is dismissed.

Cite as *Matter of R-S-*, ID# 14841 (AAO Dec. 4, 2015)