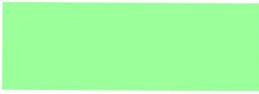


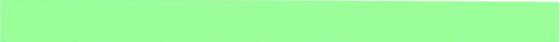
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U.S. Citizenship
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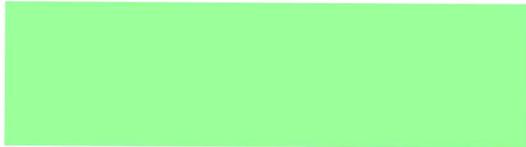


Date: JAN 12 2015 Office: VERMONT SERVICE CENTER File: 

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:



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 Acting Director, Vermont Service Center (“acting 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.

On March 24, 2014, the acting director denied the self-petition for failure to establish that the petitioner was battered or subjected to extreme cruelty by his wife during their marriage. On appeal, the petitioner submits a brief.

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 an abused spouse self-petition are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (i) (A) Is the spouse of a citizen or lawful permanent resident of the United States [and]
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner. . . .

* * *

(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 Uzbekistan. The petitioner indicates on the Form I-360 that he last entered the United States on February 27, 2011.¹ On January [REDACTED] the petitioner married N-J-², whom he claims is a U.S. citizen, in [REDACTED] Pennsylvania. The petitioner filed the instant Form I-360 self-petition on August 12, 2013. The acting director subsequently issued a Request for Evidence (RFE) of N-J-'s battery or extreme cruelty. The petitioner responded with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. The petitioner's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

In the petitioner's affidavit, dated August 5, 2013, he stated that N-J- took advantage of him and his money. He recounted buying her cigarettes, gas, and paying her bills. He claimed she used drugs, contracted Hepatitis C, and became pregnant with another man's child. Licensed social worker, [REDACTED] described that N-J- exploited the petitioner financially to support her drug use, embarrassed him, and had a baby with another man. A letter from the petitioner's coworker, [REDACTED] briefly recounted that N-J- visited the petitioner at work to ask for money and cigarettes, and that she once was swearing and yelling when she was high on drugs. In response to the RFE, the petitioner resubmitted documents already in the record, including the petitioner's August 5, 2013 affidavit, the psychological evaluation from [REDACTED], and the letter from Ms. [REDACTED].

The petitioner's affidavit did not make any allegation of physical assault or battery, and did not describe in probative detail any actual or threatened violence, psychological or sexual abuse, or other behavior that constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The psychological evaluation and the letter from Ms. [REDACTED] also did not provide additional information regarding any particular incident or behavior that would constitute extreme cruelty. The present record does not demonstrate that N-J-'s alleged drug use resulted in an ongoing cycle of battery or extreme cruelty against the petitioner. When viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that N-J- subjected him to battery or any other behavior that constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, 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.

¹ The record does not contain documentation showing this date of entry but does indicate an entry on January 3, 2003 as a B-2 nonimmigrant visitor.

² Name withheld to protect the individual's identity.

Qualifying Relationship

Beyond the acting director's decision, the petitioner has not established he has a qualifying spousal relationship with a U.S. citizen.³ The petitioner did not provide evidence of his wife's U.S. citizenship status as required by 8 C.F.R. § 204.2(c)(2)(ii). A search of relevant U.S. Citizenship and Immigration Services (USCIS) records failed to provide any evidence of N-J-'s alleged U.S. citizenship. *See* 8 C.F.R. § 204.1(g)(3). Moreover, a *de novo* review of the record reflects that the petitioner did not establish that his first marriage ended in a valid divorce. The divorce decree in the record contains grammatical and spelling errors. The record does not contain an original divorce decree, but only a photocopy which was translated by the petitioner who did not certify that it is a complete and accurate translation or that he is competent to translate the document into English as required by 8 C.F.R. § 103.2(b)(3). There is no indication the petitioner attended his divorce hearing in Uzbekistan as it appears he was living in the United States when it was purportedly issued in February 2004. Consequently, the petitioner has not established by a preponderance of the evidence that his first marriage ended in a valid divorce. Because the petitioner failed to establish he was validly divorced from his first wife, he was not free to subsequently marry N-J- and, therefore, cannot establish he had a qualifying spousal relationship with a U.S. citizen. Accordingly, the petitioner has failed to demonstrate that he has a qualifying spousal relationship with a U.S. citizen and is eligible for immediate relative classification based on such a relationship pursuant to section 204(a)(1)(A)(iii)(II)(aa), (II)(cc) of the Act.

Entry into the Marriage in Good Faith

Also beyond the acting director's decision, the petitioner failed to establish he entered into marriage with N-J- in good faith. In his affidavit, the petitioner briefly recounted meeting N-J- through friends and that she started calling him and visiting him at work. He stated that they would go out sometimes, talked on the telephone, and spent time with her nine-year old son. The petitioner described that they got married and had a small wedding ceremony.

The petitioner did not describe in probative detail the couple's courtship, wedding ceremony, and shared experiences apart from the abuse. Letters from the petitioner's friends, [REDACTED] and [REDACTED] did not mention N-J- or the petitioner's relationship with her. The letter from [REDACTED] also failed to provide more information regarding the petitioner's marital intentions. Although the record shows the couple filed a joint income tax return in [REDACTED], and the record includes an income tax adjustment for [REDACTED] and copies of photographs of the couple, without a more detailed statement from the petitioner regarding his marital intentions and relationship and probative information from his friends in support of the petitioner's claims, the preponderance of the relevant evidence does not establish that the petitioner entered into marriage with N-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

Conclusion

The petitioner has not established by a preponderance of the evidence that N-J- subjected him to battery or extreme cruelty during their relationship. He has also not established a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immigrant classification based upon such a relationship, and that he entered into the marriage with N-J- in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.