

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: JAN 29 2015

Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE: Self-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:
[REDACTED]

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 Vermont Service Center Acting 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 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 married his spouse in good faith.

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:

(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.

Pertinent Facts and Procedural History

The petitioner, a citizen of India, last entered the United States as a nonimmigrant visitor on September 9, 2007. The petitioner married S-F-¹, a U.S. citizen, on February [REDACTED]. The petitioner filed the instant Form I-360 on November 5, 2013. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into his marriage with S-F-. The petitioner responded with additional evidence that the director found insufficient and the director denied the petition. The petitioner timely appealed.

We review these proceedings *de novo*.

Good-Faith Entry into the Marriage

In his affidavit, the petitioner stated that he first met S-F- at a company Christmas party on December [REDACTED], and afterwards would see her at lunch breaks. He indicated that they became friends and he told her about the problems in his marriage. He stated that they were laid off in August [REDACTED] and stopped communicating with each other but reconnected after his divorce. For their first date, the petitioner stated that he gave S-F- jewelry on her birthday, took her to a restaurant near the Statue of Liberty, and afterwards went for a walk with her. He generally stated that he and S-F- spent time together and with his friends and that he then proposed to her on New Year's Eve of [REDACTED]. He stated that they were married on February [REDACTED] and afterwards invited their family members and friends to a reception at an Indian restaurant. The petitioner indicated that upon their marriage they moved into an apartment. He stated that he cooked for S-F-, gave her gifts, and that they went to dinners and luncheons with his friends. He indicated that after S-F- was reinstated at her job in New Jersey they started to have marital problems. The petitioner, however, did not discuss in probative detail the first time he met S-F-, their courtship and subsequent engagement, decision to marry, marriage ceremony, marital residence, joint belongings, and shared experiences, apart from the abuse.

In addition to his affidavit, the petitioner provided affidavits from his friends and landlord. [REDACTED] generally stated that he "hung out a couple of times" with the petitioner and S-F- while they dated, and attended their wedding. [REDACTED] indicated that he had dinner with the

¹ Name withheld to protect individual's identity.

petitioner and S-F- after they married. [REDACTED] stated that he and the petitioner and S-F- “hung out together” a few times, he was present at their marriage ceremony and reception, and went on a picnic in which he saw “the newlywed couple was glowing.” The petitioner’s friends provided no detailed probative information to demonstrate the petitioner’s relationship with S-F- and good-faith marital intent. Similarly, the petitioner’s landlord, [REDACTED], discussed only the problems in the petitioner’s marriage and provided no detailed, substantive information to establish the petitioner’s intentions in marrying S-F-.

The petitioner submitted copies of photographs of himself and S-F- pictured together on the day of their marriage ceremony. He also provided a January [REDACTED] apartment lease agreement which is signed by the petitioner and S-F- and lists them as tenants.

On appeal, the petitioner submits additional affidavits from his friends. [REDACTED] indicates that he was present when the petitioner first met S-F- at a Christmas party and claims that the petitioner was “happy” talking and dancing with S-F-. He generally states that he would “hang out” with the petitioner and S-F-, and that the couple would “smile at each other like lovebirds,” sit “close together,” hold hands, and look “star eyed at each other.” [REDACTED] states that he went to the movies and out to eat with the petitioner and S-F- “after they became a [real] couple.” He cursorily claims that the petitioner and S-F- “sat close to each other, even leaning on each other” and were “really in love.” These general statements of the petitioner’s friends provide no detailed substantive information regarding his courtship and subsequent engagement, marriage ceremony, and his good-faith intentions in marrying.

The petitioner also submits [REDACTED] account statements and utility invoices. The [REDACTED] account statements show an account in the name of the petitioner and S-F- but the statements are dated after the petitioner’s January [REDACTED] separation from S-F-. Similarly, the utility invoices listing the petitioner and S-F- are dated after his separation from S-F-. Although the petitioner indicates that photographs taken prior to his marriage ceremony are submitted, the photographs on appeal are duplicates of the marriage ceremony pictures provided in the record below.

On appeal, the petitioner contends that the affidavits in the record below and on appeal, Dr. [REDACTED] psychosocial report, and the photographs, lease agreement, and joint documents are “substantial credible evidence” to demonstrate that he married S-F- in good faith. The petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* at 376. In this case, the petitioner provided no detailed, probative account of his relationship with S-F-. He has not described in detail the first time he met S-F-, his courtship, subsequent engagement, and decision to marry. Nor have his friends and landlord provided detailed, probative information of his relationship with S-F- and good faith intentions to marry her. Although Dr. [REDACTED] stated that the petitioner reported that he “married in good faith to establish a long-term commitment to trust and happiness,” and the report referred to a few shared occasions between the petitioner and S-F-, the cursory descriptions contained in the report are not sufficient to demonstrate the petitioner’s good-faith intentions at the time of marriage.

The petitioner asserts that he explained in his affidavit that he lacked joint documentation because he financially supported S-F-. Traditional forms of joint documentation such as joint bank accounts are not required to demonstrate a self-petitioner's entry into the marriage in good faith. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). 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." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's statements as well as those of his friends and landlord do not probatively establish that he married S-F- in good faith. Although the petitioner has provided photographs and a few joint documents, without a detailed description from the petitioner of his relationship with S-F- and his decision to marry, the evidence in the record is not sufficiently probative to establish that he entered into the marriage with S-F- in good faith. In making a decision on a self-petition the determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The petitioner also argues that it is a contradiction for the director to find that he demonstrated the requisite abuse but did not demonstrate his good-faith entry into the marriage with S-F-. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements; meeting one eligibility requirement will not necessarily demonstrate the others. Although the petitioner established that S-F- abused him during their marriage, the preponderance of the relevant evidence fails to demonstrate that he entered into the marriage with her in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not established that he entered into the marriage with S-F- in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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* at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.