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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

[REDACTED]

DATE: JUL 07 2015 [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

INSTRUCTIONS:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (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 under 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 United States citizen spouse.

The director denied the petition, finding that the petitioner did not establish a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification based on such a relationship. The director also determined that the petitioner did not demonstrate that he entered into the marriage with his wife in good faith, resided with her, and that she subjected him to battery or extreme cruelty.

On appeal, the petitioner submits a supplemental personal statement, his wife’s California birth certificate, and additional evidence.

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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (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].

* * *

(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 United States 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.

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser[].

(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, a citizen of India, initially entered the United States on May 28, 2009, as an M-1 nonimmigrant student.¹ On [REDACTED] he married R-B-², a U.S. citizen, in Texas. The petitioner filed the instant Form I-360 self-petition on May 24, 2010. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good faith intentions in marrying his wife, his residence with her, and the requisite battery or extreme cruelty. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We review these matters on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director correctly determined that the petitioner did not establish that he had a qualifying spousal relationship with a U.S. citizen and the corresponding eligibility for immediate relative classification. Although the record below included copies of the petitioner's marriage certificate to R-B- and her social security card and Texas driver's license, it did not contain evidence of R-B-'s U.S. citizenship.

On appeal, the petitioner submits a copy of R-B-'s California birth certificate, demonstrating that she was born in the United States. Accordingly, the petitioner has established that his wife, R-B-, is a United States citizen, and that he is eligible for immigrant classification under section 201(b)(2)(A)(i)

¹ On appeal, the petitioner indicates that he departed the United States for the purpose of reinstating his nonimmigrant student status. Although his student status was not reinstated, the petitioner was paroled into the United States on May 11, 2011 during the pendency of these Form I-360 proceedings.

² Name is withheld to protect the individual's identity.

of the Act based on that qualifying relationship.

Although the petitioner has demonstrated on appeal that his wife is a U.S. citizen through whom he is eligible for immediate relative classification based on that relationship, he has not established that he entered into the marriage with her in good faith, resided with her, and that she subjected him to battery or extreme cruelty during their marriage.

Entry into the Marriage in Good Faith

The director correctly determined, and the evidence submitted on appeal does not overcome, that the petitioner has not demonstrated his good faith entry into the marriage with R-B-. The record contains the petitioner's personal statements, his marriage certificate, the statement of a friend, and computer printouts of a vehicle insurance policy.

In his initial statement, the petitioner indicated that he met R-B- in August 2009 at a sandwich shop where his friend, [REDACTED] worked. He stated that he became attracted to R-B- a couple days later and went on various dates with her, finding her loving and understanding. The petitioner recalled R-B- surprising him one day with a ring, and he reciprocated by doing the same. They married [REDACTED] later, in [REDACTED]. In a subsequent statement, submitted in response to the RFE, the petitioner recounted R-B-'s fondness for him and how they would often go to restaurants and motels in [REDACTED]. He indicated that they made plans together for the future and he felt blessed to have R-B- as a partner. However, the petitioner's statements did not provide any probative details of their initial meeting, courtship, wedding ceremony, joint residence, or any shared experiences, apart from the claimed abuse. The petitioner also submitted a statement from [REDACTED] who did not address the petitioner's good faith intentions in marrying R-B- and provided no substantive information about any shared interactions or experiences with the couple to demonstrate such intentions.

The remaining documentary evidence in the record is insufficient to establish that the petitioner entered into the marriage with R-B- in good faith. While the petitioner's marriage certificate establishes a legal marriage, it does not demonstrate the nature of the relationship or the petitioner's good faith marital intentions. The record also includes computer printouts for the petitioner's vehicle insurance policy showing his and R-B-'s marital status as married and listing R-B-, as well as several other individuals, as an excluded driver on the policy. However, the printouts are from November 2010, more than one year after the date on which the petitioner asserted, on the Form I-360 self-petition, that he and R-B- separated, and offer no insight into his good faith intentions.

On appeal, the petitioner has not specifically addressed his good faith marital intentions, but explains that he does not have many supporting documents because he and R-B- only resided together for approximately one month. He submits on appeal an additional computer printout of his vehicle insurance records, indicating that he added R-B- as an excluded driver in September 2009, and explains that she was so listed because he had not yet provided all the requisite information. However, as noted, the vehicle insurance record is insufficient to demonstrate the petitioner's good faith marital intentions, particularly as R-B- was listed as an excluded driver on the policy and because the document does not give any insight into his relationship with his wife. The petitioner also proffers a copy of an undated letter from R-B-, but there is no indication on the face of the letter that it was addressed to the

petitioner. Additionally, while the letter speaks to R-B-'s remorse for her actions and her warm feelings towards her "good friend," it does not demonstrate the petitioner's good faith intentions in marrying her.

Traditional forms of joint documentation are not required to demonstrate a petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a 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. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's statements, the statement of his friend, and the evidence submitted below and on appeal do not provide sufficient detail to establish his good faith intent in marrying R-B-. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into the marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The petitioner also has not established that he resided with R-B- as required. The petitioner asserted on the Form I-360 petition that he resided with R-B- from August to September 2009 and that their last shared residence was at [REDACTED]. Traditional forms of joint documentation are not required to demonstrate a petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). Here, the petitioner's statements have not provided a history of, or described in any probative detail, his shared residences with his spouse. Moreover, his assertion on the Form I-360 that he resided with R-B- beginning in August 2009 is inconsistent with his initial personal statement in which he indicated that they moved in together only after marrying on [REDACTED]. In subsequent statements, the petitioner inconsistently asserted that he and R-B- resided together for only about one month at their [REDACTED] apartment from September 28, 2009 to October 28, 2009, but did not indicate where they lived between marrying on [REDACTED] and moving into the apartment on September 28, 2009. In explaining why he was unable to obtain a copy of the lease for their shared [REDACTED] apartment, the petitioner indicated below that he was part owner of the apartment. However, on appeal, the petitioner states that the leasing office refused to provide him a copy of the lease because he was only an occupant and not the primary lessee on the lease agreement. The petitioner has not provided an explanation for the noted discrepancies. The totality of the evidence of record does not establish, by a preponderance of the evidence, that the petitioner resided with his wife as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The petitioner has also not established that R-B- subjected him to battery or extreme cruelty during their marriage. The relevant evidence in the record includes the petitioner's personal statements, letters from his wife, a social worker and a clinic, and friend [REDACTED] statement.

In his initial statement, the petitioner indicated that he and R-B- did not have any problems until a few weeks into their marriage, when she began making sarcastic jokes about girls with whom he studied.

He stated that during the first week of September 2009, R-B- was fine with him attending the mosque for Ramadan, but "a couple days later," began suggesting that his attendance might cause him problems with the FBI. The petitioner recounted that R-B- made derogatory comments about his Muslim faith and began implying that he was attending the mosque to receive terrorist training. However, his assertion that his wife's derogatory comments commenced a "couple days" after the first week of September is contrary to his earlier statement that they did not have problems until a few weeks after marrying on [REDACTED]. The petitioner also indicated that R-B- threatened him with deportation as well as physical harm at the hands of her cousin, a former convict, if he ever attempted to divorce or leave her. He did not, however, provide any probative details or substantive information about any specific incident when such threats were made, including approximately when and where the incidents took place. The petitioner recalled that on October 27, 2009, he received a telephone call from his wife, saying that she was ending their relationship and wanted him out of the apartment. He stated that R-B- continued to threaten him after he moved out, contacting him on his telephone every hour. However, he did not provide any probative details about any claimed telephone call, including the specific threats R-B- made and when and for how long the calls continued. The petitioner stated that he finally decided to report the situation to the police, who gave him helpful advice. He indicated that his marital problems made him anxious and depressed, forcing him to visit a nearby clinic where he was prescribed medication to treat his depression and anxiety, which he continued to take. The petitioner's statement provided only general descriptions of the claimed emotional abuse and threats, and did not describe any specific incident of abuse in any probative detail.

In response to the RFE, the petitioner submitted a supplemental statement, maintaining that he lost his family life, his career, and nearly a year of his education because of the abuse to which R-B- subjected him. He described an incident where they had a verbal altercation because R-B- believed that the female fast food employee was flirting with the petitioner when she asked him for his name. The petitioner recalled that he became angry with R-B- and she apologized. He reasserted that R-B- made threats to have him deported, claiming to have friends in the FBI and in immigration, and that she could have her cousin physically harm him if she wished. He did not describe in probative detail any of the claimed incidents in which R-B- threatened him. The petitioner's statements, overall, provide only a general account of the claimed abuse during his marriage without the specific, substantive information necessary to demonstrate that his wife battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The letter from social worker, [REDACTED] LMSW indicated that the petitioner had been a client since December 2009 and received counseling services. It did not indicate how often or how long [REDACTED] met with or counseled the petitioner, but asserted that he was experiencing common effects of domestic violence, including anxiety, restlessness, and sleeplessness. The letter was accompanied by an intake form. However, the form appears to be entirely a self-evaluation, prepared and signed by the petitioner, who checked off various forms of abuse to which he claimed to have been subjected. While we do not question [REDACTED] professional opinion, her assessment conveyed only what the petitioner relayed to her and provides no further, probative information regarding the claimed abuse.

The remaining evidence, including a letter from a clinic, and friend [REDACTED] statement, are also

insufficient to demonstrate the requisite battery or extreme cruelty. The clinic letter indicated only that the petitioner was seen on November 8, 2009 and was well enough to return to school or work the same day without restrictions. The document did not identify the purpose of the petitioner's visit. [REDACTED] did not detail his knowledge of the claimed abuse except to relay some of what the petitioner told him. He recounted one interaction with R-B- during which she spoke of "vulgar topics about her physical and mental relationship with" the petitioner, but did not further describe or provide substantive information about the incident or R-B-'s statements. [REDACTED] also recalled an incident during which R-B- claimed the petitioner was hitting her when he was actually only holding her arm to calm her down. He did not offer any probative details about any claimed abuse, and the petitioner did not refer to this incident in any of his personal statements.

On appeal, the petitioner does not personally address the director's conclusion that he did not establish that he was subjected to battery or extreme cruelty by R-B-. Rather, he submits a copy of a letter from R-B-, which he maintains is evidence of the ill-treatment and abuse to which she subjected him. As previously noted the letter is undated, does not indicate the intended recipient, and does not name the petitioner. Further, the petitioner has not explained, in any of his personal statements, when and under what circumstances the letter was written to him, and the letter itself, although apologetic in tone does not identify the acts or claimed mistreatment for which R-B- is apologizing.

Traditional forms of documentation are not required to demonstrate that a petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). As discussed, the relevant evidence, submitted below and on appeal, is insufficient to demonstrate that R-B- subjected the petitioner to battery or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that R-B- 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 established a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification based on that relationship. The portions of the director's decision finding to the contrary are withdrawn. The petitioner has not, however, demonstrated that he entered into the marriage with his wife in good faith, resided with her, and that she subjected him to battery or extreme cruelty. Accordingly, the petitioner is 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. The appeal is dismissed.

ORDER: The appeal is dismissed.