



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 23 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 SELF-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,


f 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 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 a United States citizen.

The director denied the petition finding the petitioner did not establish that he married his spouse in good faith. The petitioner submits a timely appeal.

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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act 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 explained further 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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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 Uganda, entered the United States as an F-1 nonimmigrant student on August 27, 2009.¹ He married D-C-,² a U.S. citizen, on [REDACTED] 2010, and they were divorced on [REDACTED] 2013. The petitioner filed the instant petition on March 31, 2014. The director denied the petition finding the record insufficient to establish that the petitioner entered into his marriage with D-C- in good faith. The petitioner filed a timely appeal.

We review these proceedings on a *de novo* basis. A full review of the record, including the relevant evidence submitted on appeal, does not establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Good-Faith Entry into Marriage

On appeal, the petitioner asserts that the director inappropriately denied his petition by "unreasonably" rejecting credible evidence and relying on minor discrepancies contained in the record and that the director "failed to follow the 'any credible evidence' standard." However, the submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. The "any credible evidence" standard is an evidentiary standard, not a burden of proof. Although U.S. Citizenship and Immigration Services (USCIS) must consider all credible evidence relevant to a petitioner's entry into the marriage in good faith, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i).

¹ The record reflects that the petitioner did not attend the academic program at the university identified on Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status – For Academic and Language Students.

² Name withheld to protect the individual's identity.

To demonstrate his good-faith entry into marriage with D-C-, the petitioner initially submitted a personal declaration dated March 27, 2014; bank account and billing statements; copies of joint tax returns; academic correspondence and certificates; copies of his social security card and driver license; a copy of a letter issued by the Social Security Administration (SSA) dated June 16, 2010; and photographs. In response to a Request for Evidence, the petitioner resubmitted copies of the bank account and billing statements, the academic and SSA correspondence, his social security card, and photographs. In addition, he supplemented the record with letters of support from his brother and co-workers; an affidavit from his accountant dated August 4, 2014; email correspondence with his previous attorney dated March 27, 2014; a copy of a letter issued by USCIS dated June 29, 2010; copies of his earnings statements from February and March 2011; and a partial copy of D-C-'s W-2 statement from 2011. In support of his appeal, the petitioner resubmitted his accountant's August 2014 affidavit, and he supplemented the record with an undated, amended statement from a co-worker; copies of tax transcripts and amended tax returns for 2009 and 2010; a copy of AR-11, Alien's Change of Address Card; and a copy of a forwarded address label on correspondence issued by USCIS.

The petitioner indicated on his self-petition that he resided with D-C- from January 2010 until August 2011 and that they last resided together on the second floor of [REDACTED] in [REDACTED] Connecticut. On his Form G-325, Biographic Information (Form G-325), signed on March 26, 2014, he similarly indicated that he resided at the [REDACTED] address from January 2010 until August 2011. In his March 2014 declaration, the petitioner indicated that he met D-C- on an unspecified date and at an unspecified location in the winter of 2009. He stated that over the next month they "grew closer and closer," had dates at their favorite restaurant, took walks together, and that D-C- invited him to move in with her and her two children. He then indicates that "[o]ne day in January of 2010," D-C- surprised him by proposing to him. He recounted marrying her the following month in a "small wedding that was attended by close family and friends," and indicated their "honeymoon was very enjoyable." He claimed that at that time they lived together "in a 3 bed roomed [sic] apartment on the second floor with our two children." He did not provide any further details about their first meeting, times spent together during their courtship, their engagement, marriage, and residences during the marriage other than as it relates to the abuse.

The petitioner has also provided inconsistent information regarding the dates that he and D-C- resided together. In his March 2014 declaration and on his Form G-325, he indicated that they lived together from January 2010 until August 2011 in the apartment on [REDACTED]. However, the petitioner's marriage certificate indicates that at the time they applied for the license, they were living at separate addresses; he was residing at [REDACTED] Connecticut, and D-C- was residing at [REDACTED] Connecticut. Moreover, on a Form AR-11, Alien's Change of Address Card signed by the petitioner and dated June 6, 2010, the petitioner indicated that he was residing at the [REDACTED] address, and his previous address was the [REDACTED] address.

In addition, the letters submitted on the petitioner's behalf do not contain any further probative and detailed information to establish the petitioner's good-faith entry into marriage with D-C-. In his July 2014 affidavit, the petitioner's brother stated that he learned of the petitioner's relationship

with D-C- in December 2009, and he generally discussed that D-C- would pick-up the petitioner for their dates and that they talked on the telephone. The petitioner's brother also indicated that he attended the petitioner and D-C-'s wedding and that he occasionally visited them at their residence on [REDACTED] but he does not provide any further details about their relationship prior to marriage, the wedding ceremony and reception, or their marital residence, other than as it relates to the abuse.

In his affidavits, Mr. [REDACTED] recalled D-C- dropping off and picking-up the petitioner at their work but provided no other details regarding the petitioner's relationship with D-C- and his good-faith intent in marrying D-C-. In her July 2014 affidavit, Ms. [REDACTED] indicated that she would "hang out" with the petitioner and D-C- as she became good friends with D-C-. The petitioner's co-workers attest to knowing the petitioner and D-C- as a married couple, but they do not describe any particular visit or social occasion in detail or otherwise provide detailed information to establish the petitioner's good-faith intent in marrying D-C-.

Although the petitioner states that he does not have access to many documents to establish his good faith marriage because of the abuse he suffered "at the hands of" D-C-, 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). The petitioner submitted undated photographs of himself and D-C-, joint bank account and billing statements at the [REDACTED] address, tax and employment documents, and copies of USCIS correspondence. Although the petitioner submits joint documentation listing the claimed residence at [REDACTED] address, the petitioner has provided inconsistent evidence regarding his and D-C-'s residence at this address. Even without consideration of these inconsistencies, the petitioner has not provided sufficient probative and detailed information about his marital intentions and relationship. His statements and those submitted on his behalf do not provide a probative account of how he and D-C- met, their courtship, wedding ceremony, and shared residence, living arrangements, routines, and experiences, apart from the abuse. When viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the petitioner entered into marriage with D-C- in good faith as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

Residence

As mentioned previously, the record contains inconsistent information concerning the petitioner's shared residence with D-C-, and accordingly, we concluded that the record does not include sufficient evidence establishing that the petitioner entered his marriage in good-faith. Based on the above stated reasons, beyond the decision of the director, we further find that when viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the petitioner resided with his spouse. Accordingly, we withdraw the director's finding that the petitioner has established his joint residence as required by section 204(a)(1)(A)(iii)(II)(dd) of the

Act. The self-petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial, and the petitioner's appeal will be dismissed.³

Conclusion

In these proceedings, 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*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. The appeal will be dismissed.

ORDER: The appeal is dismissed and the petition remains denied.

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); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).