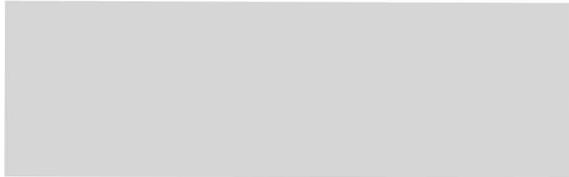




U.S. Citizenship
and Immigration
Services

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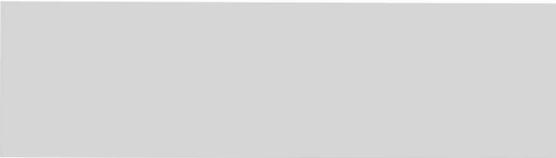
PETITION RECEIPT#:

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 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360) and the matter is now before the 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 finding the evidence insufficient to establish that the petitioner entered into the marriage in good faith, and that he resided with his spouse during the marriage. On appeal, the petitioner submits 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 states, in pertinent part, that:

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 or as a preference immigrant if he or she . . .

(A) Is the spouse of a citizen . . . of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship

* * *

(iii) *Citizenship or immigration status of the abuser.* The abusive spouse must be a citizen of the United States . . .

* * *

(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 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. . . .

(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 is a citizen of Jamaica who entered the United States as a B-2 nonimmigrant on November 17, 2006. The petitioner married S-Y-¹, whom he alleges is a U.S. citizen, on [REDACTED] 2011. He filed the instant Form I-360 self-petition on February 19, 2014. On April 16, 2014, the director sent a Request for Evidence (RFE) to which the petitioner timely responded. The director denied the petition on June 30, 2014, on the basis that the petitioner did not establish his good-faith entry into his marriage with S-Y-. The director found further that the petitioner did not establish that he resided with S-Y- during the marriage. The petitioner indicates on appeal that his marriage to S-Y- is bona fide, and that evidence in the record establishes that he resided with S-Y-.

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.

Joint Residence

The petitioner stated on his Form I-360 that he and S-Y- resided together between December 2011 and January 2014. He stated further that he last lived together with S-Y- on January 4, 2014, at [REDACTED], Connecticut. Although the couple's marriage certificate indicates a joint residence, the petitioner submitted no personal affidavit with the Form I-360, or any other evidence providing details of his joint residence with S-Y-.

In response to the director's RFE asking for evidence of joint residence with S-Y-, the petitioner submitted affidavits from friends and family members. The petitioner's nephew, [REDACTED] discussed generally abuse that the petitioner told him about. He did not, however, state that the

¹ Name withheld to protect individual's identity.

petitioner and S-Y- lived together, and he provided no information to indicate awareness or knowledge of their joint residence. [REDACTED] stated in their affidavits that they socialized with the petitioner and S-Y- at restaurants, parties, and other locations. They did not, however, state or indicate that they visited or socialized with the couple at their home, and they provided no information about the location of the petitioner's home, or other details of the petitioner's and S-Y-'s joint residence. An affidavit from the petitioner's friend, [REDACTED] indicated that he went to the petitioner's house, and [REDACTED] stated that she met the petitioner and S-Y- "at various places," and that she "visited them at the house many times." However, neither individual provided probative details regarding the dates that they visited the couple's home, the location of the shared residence, or any other detailed information relating to the petitioner's and S-Y-'s residence.

In response to the director's RFE, the petitioner also submitted a photograph of the petitioner and S-Y- together, and another indicating that they were "just married." The photographs do not identify where the pictures were taken, or reflect that the petitioner and S-Y- lived together.

On appeal, the petitioner submits a copy of S-Y-'s driver's license containing the [REDACTED], Connecticut address. The document does not, however, demonstrate joint residence during the marriage, as it was issued on December 1, 2011, prior to the couple's wedding date. The petitioner also submits a letter from S-Y- stating that she and the petitioner "are married and presently living together at [REDACTED], Connecticut." However, the letter is dated July 21, 2014, several months after the January 4, 2014 date that the petitioner gave as the date that the couple last lived together. Moreover, the letter lacks any details regarding the couple's shared residence or shared residential routines. A letter from a dentist sent to the petitioner at the [REDACTED] address, is undated and does not contain S-Y-'s name. Similarly, a hospital bill sent to the petitioner at [REDACTED] does not contain S-Y-'s name and is dated August 14, 2011, several months prior to the petitioner's marriage. A Federal Express receipt for a letter sent to the petitioner at the [REDACTED] address also does not include S-Y-'s name. The receipt is also dated June 23, 2014, several months after the January 4, 2014 date that the petitioner provided on the Form I-360 as the last date that the couple lived together. Lastly, a [REDACTED] phone bill contains S-Y-'s name but does not list an address for S-Y-, and is for a billing period between June 2014 and July 2014.

Upon review, the evidence is insufficient to establish that the petitioner and S-Y- resided together during their marriage. Although the record contains some documentation individually addressed to either the petitioner or S-Y- at the claimed marital address, the record contains no personal affidavit from the petitioner describing any details of his joint residence with S-Y-. In addition, letters from S-Y- and the petitioner's friends and family lack probative details of the couple's joint residence. Further, documentary evidence submitted on appeal is dated either prior to the marriage, or after the January 4, 2014 separation date. Overall, the record does not establish, by a preponderance of the evidence, that the petitioner resided with S-Y-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Marriage

The petitioner provided no statement or information with the Form I-360 describing how and where he met S-Y-, their courtship, wedding, shared experiences, and his good-faith intentions for marrying S-Y-.

Affidavits from the petitioner's friends and family members, submitted in response to the director's RFE, also lack probative details to demonstrate the petitioner's good-faith entry into his marriage. The petitioner's nephew, [REDACTED] stated generally that the petitioner introduced S-Y- to him and that he has "known about" the petitioner and S-Y- since April 2009. [REDACTED]

[REDACTED] and [REDACTED] indicated generally that they have known the petitioner and S-Y- for many years, and that they met with the couple and socialized at restaurants and other locations. [REDACTED] added that the petitioner and S-Y- "seem[ed] happy" together, and [REDACTED] indicated that the couple "was [mesmerized] by each other." [REDACTED] stated that the petitioner introduced S-Y- as his best friend, and [REDACTED] stated that she saw the petitioner and S-Y- as a "beautiful couple." None of the affidavits, however, provided details of specific interactions with the petitioner and S-Y-. Moreover, the affidavits lack probative details regarding the couple's courtship, engagement, and relationship.

In addition, although the petitioner states generally on his Notice of Appeal (Form I-290B) that his marriage to S-Y- "is bona fide and valid," he provides no further statements or information about his courtship, wedding, shared experiences, and intentions for marrying S-Y-.

Photographs submitted in response to the director's RFE also do not reflect the petitioner's good-faith intentions when he married S-Y-, as they are undated and do not identify the particular events depicted. Furthermore, although the "just married" photograph and the petitioner's marriage certificate reflect the petitioner's marriage to S-Y-, they are not sufficient to demonstrate that the marital union was entered into in good faith.

The letter from S-Y-, submitted on appeal, also contains no statements or information relating to the couple's shared experiences and history together.

Upon review, the evidence is insufficient to establish, by a preponderance of the evidence, that the petitioner entered into his marriage with S-Y- in good faith. The petitioner provides no statements detailing his relationship and shared life with S-Y-, and affidavits from friends and family lack probative descriptions of interactions that would establish the petitioner's relationship and marital intentions with S-Y-. Further, documentary evidence does not demonstrate that the petitioner entered into his marriage with S-Y- in good faith. Because the record does not establish that the petitioner entered into the marriage in good faith, he does not meet the requirements contained in section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Eligibility for Immediate Relative Classification

Beyond the decision of the director, the evidence is insufficient to demonstrate that S-Y- is a U.S. citizen.² Although the petitioner's marriage certificate indicates that S-Y- was born in the state of North Carolina, the record contains no birth certificate, passport, or other primary evidence to demonstrate that

² 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).

S-Y- is a United States citizen, or that such evidence is not available. Accordingly, the petitioner has not established that he has a qualifying spousal relationship with a U.S. citizen or that he is eligible for immigrant classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act.

Battery or Extreme Cruelty

Beyond the decision of the director, the evidence is also insufficient to demonstrate that the petitioner was battered by S-Y-, or that she subjected him to extreme cruelty during the marriage. The affidavits from the petitioner's friends and family refer generally to acts of physical and emotional abuse that the petitioner told them about. However, the record contains no statement or information from the petitioner himself, describing the claimed battery or extreme cruelty by S-Y-. Further, the affidavits from the petitioner's friends and family lack probative details regarding specific incidents of battery and extreme cruelty by S-Y- towards the petitioner, and the record contains no other evidence of the alleged abuse. Overall, the record is insufficient to establish, by a preponderance of the evidence, that the petitioner was battered by or subjected to extreme cruelty by S-Y- during the marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The record is insufficient to establish, by a preponderance of the evidence, that the petitioner resided with S-Y- and that he entered into the marriage in good faith, as required under sections 204(a)(1)(A)(iii)(II)(dd) and 204(a)(1)(A)(iii)(I)(aa) of the Act. Beyond the director's decision, the record also lacks evidence to establish that S-Y- is a U.S. citizen, and therefore that the petitioner has a qualifying spousal relationship and is eligible for immediate relative classification as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act. In addition, the record is insufficient to establish that the petitioner was battered or subjected to extreme cruelty by S-Y- during the marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.