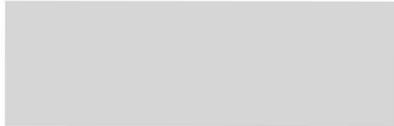




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 24 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 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,

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

f Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (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 U.S. citizen.

The director denied the petition finding the petitioner did not establish that he resided with his wife, was subjected to battery or extreme cruelty by her during their marriage, and entered into marriage with her in good faith.

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 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:

(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 . . . 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.

* * *

(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 Kenya who last entered the United States as a nonimmigrant student on December 28, 2000. The petitioner was placed in removal proceedings on April 30, 2010. He married K-G-¹ a U.S. citizen, in New York on [REDACTED] 2011. An immigration judge terminated removal proceedings on April 13, 2011. The petitioner filed the instant Form I-360 on August 16, 2012. The director subsequently issued Requests for Evidence (RFE) of the petitioner's good-faith entry into the marriage, his joint residence with K-G-, and the battery or extreme cruelty he was subjected to by K-G- during their marriage. The petitioner responded with additional evidence which the director found insufficient, and a Notice of Intent to Deny (NOID) was issued regarding derogatory information obtained from a visit to the petitioner's claimed joint residences by U.S. Citizenship and Immigration (USCIS) officers. The petitioner responded with additional evidence which the director again found insufficient and denied the petition accordingly. The petitioner filed a timely appeal.

We review these proceedings *de novo*. A full review of the record does not establish the petitioner's eligibility. The petitioner has not demonstrated that he resided with K-G-, that she battered or subjected him to extreme cruelty during their marriage, and that he married her in good faith.

Joint Residence

Based on the relevant evidence submitted below, the director correctly determined that the petitioner did not establish that he resided with K-G- during their marriage. On his Form I-360 self-petition, the petitioner stated that he resided with K-G- from January 2011 until April 2012 and listed [REDACTED] New Jersey, as his last residence with her. In his response to the RFE, the petitioner indicated that he resided with K-G- at [REDACTED] New Jersey, and [REDACTED] but he did not specify the dates of their residence and describe either of their joint residences or marital routines apart from the claimed abuse. In his response to the NOID, he claimed that he and K-G- moved from [REDACTED] to his home at [REDACTED] in May or June of 2011, but did not further describe in probative detail his homes with K-G-, their shared belongings, and residential routines or provide any other probative information to establish that he shared residences with K-G- after they married.

The petitioner also provided letters from his pastor, [REDACTED] and K-G-'s mother, [REDACTED]. In her letters, Ms. [REDACTED] recounted visiting the couple in [REDACTED] and [REDACTED] and stated that the [REDACTED] home was "deplorable" and "not well furnished," but primarily discussed their marital problems and provided no further probative information of joint residence. Likewise, Ms. [REDACTED] focused on the couple's marital problems and did not provide substantive information of joint residence. The petitioner also provided letters from his co-worker and friend [REDACTED] and his friends, [REDACTED] and [REDACTED]. Although they indicated that they had visited the petitioner's marital home, their statements were about the

¹ Name withheld to protect the individual's identity.

petitioner's marital problems and did not describe any specific residential visit or provide any detailed, probative information about joint marital residence.

The petitioner also submitted: copies of K-G-s Wage and Income Transcripts for 2008 and 2009, an April 5, 2011, two-year lease agreement for [REDACTED] a joint life insurance certificate, joint bank account statements, cable and utility bills, an invoice for furniture, junk mail, copies of magazine covers, and photographs. The income tax records are for a period prior to the petitioner's marriage to K-G-. The lease agreement lists the petitioner as "landlord" and "tenant" and K-G- as "tenant," but the petitioner does explain this arrangement or its purpose in any detail. The life insurance certificate, cable and utility bills, bank account statements, junk mail, and copies of magazine covers indicate that the petitioner and K-G- received mail at the claimed addresses at [REDACTED] and [REDACTED]. The photographs are of the petitioner and K-G- but the petitioner does not indicate that the pictures were taken at their residences during their marriage.

In the NOID, the director notified the petitioner of information obtained by USCIS officers during a site visit to the [REDACTED] address on August 15, 2012, which indicated that K-G- lived there without the petitioner. A neighbor, a security guard, a handyman, and the building superintendent, when shown a photograph of K-G-, immediately identified her but were not able to identify the petitioner as having ever lived at the apartment building. The neighbor and security guard further stated that K-G- resided there until July 2012. USCIS officers also visited the [REDACTED] address, which had been identified as the petitioner's residence in public databases as well as by the petitioner in a sworn statement before a USCIS officer during his May 12, 2010 interview for the Form I-130 filed by K-G- on his behalf. During the site visit to the [REDACTED] address, a woman who indicated she was a tenant in the residence, identified the petitioner as her landlord when shown his photograph. She did not, however, recognize K-G- when shown a photograph of her. The tenant stated not only that she lived in an apartment in the same building as the petitioner for more than three years, but also that the petitioner lived on the first floor of the building with a woman named A-² and their child.

On appeal, the petitioner argues that the director erroneously gave no evidentiary weight to documents dated after 2012. Although the director did not consider evidence dated after 2012 based upon the petitioner's claim on the Form I-360 that they last resided together in April 2012, we have reviewed the record in its entirety. The petitioner further contends that contrary to the derogatory information addressed in the NOID, he and K-G- jointly resided at [REDACTED] and [REDACTED] during their marriage. The petitioner states that he was not recognized when his photograph was shown during the site visit to the [REDACTED] address because the apartment building is "massive," his wife had been living at the apartment prior to their marriage and he resided there for just "three months to four months in 2011." However, the petitioner fails to explain why his neighbor and a security guard were able to identify K-G- as having resided at [REDACTED] without the petitioner until July 2012. The petitioner's explanations are inconsistent with his Form G-325,

² Name withheld to protect the individual's identity.

Biographic Information, signed on January 20, 2011, in which the petitioner indicated that he resided at the [REDACTED] address for approximately one year, from January 2010 until January 20, 2011. The petitioner adds further inconsistency to his claim in his April 23, 2013 Form G-325, in which he indicated that he resided at the [REDACTED] from October 2010 until February 2011.

Regarding the [REDACTED] address, the petitioner contends that the tenant could not have lived at [REDACTED] for three and a half years as she stated to the officers because the building was in foreclosure proceedings at the end of 2010 and had no tenants. The petitioner, however, has not provided any evidence in support of this contention. Moreover, he has not explained why his tenant stated that he lived with a woman and the child they had together and was not able to identify K-G- in a photograph.

The petitioner has submitted inconsistent evidence regarding his purported residence with K-G- and has not sufficiently overcome the derogatory evidence in the record regarding his claimed residences. Even without these inconsistencies the petitioner has not described in any probative detail his specific dates of residence with K-G-, their residential routines, belongings, or provide any probative information regarding their marital residences. The statements submitted on the petitioner's behalf also lack specific and probative details. Accordingly, when viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner and K-G- resided together, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into the Marriage

In his initial letter, the petitioner recounted that he met K-G- in July 2009 while he was at a carnival and he gave her a ride to her home. He recalled that they went to [REDACTED] Pennsylvania for their first anniversary, but he did not further discuss in probative detail the first time he met K-G-, their courtship and subsequent engagement, marriage ceremony, joint residence, or any of his shared experiences with K-G-, apart from the claimed abuse. In his second letter, the petitioner primarily discussed his removal proceedings and marital problems with K-G-. His pastor recounted being introduced to K-G- by the petitioner during their courtship, and confirmed that the petitioner and his wife received marital counseling in 2011 and 2013, but she provided no probative information of the petitioner's good-faith intent. Similarly, [REDACTED] and [REDACTED] recalled meeting K-G- during the couple's courtship, and attending the wedding or seeing the couple after they wed, but did not describe their observations of the petitioner's interactions with or feelings for K-G- during their courtship and marriage, other than as it relates to the claimed abuse.

The petitioner also submitted a certificate from [REDACTED] Life Insurance Company listing the petitioner and K-G- as policy holders, joint checking account statements from [REDACTED] Bank, utility and cable invoices, the lease for the [REDACTED] residence, and various mail and magazine covers showing listing the [REDACTED] address. In addition, the petitioner submitted photographs with K-G- but they are undated and other than the wedding pictures, the petitioner does not describe the significance of the events in the photographs. Finally, the petitioner submitted evidence of a trip that he took with K-G-.

On appeal, the petitioner discusses joint residence with K-G- but makes no arguments and provides no additional evidence to demonstrate his good-faith intentions in marrying her. Although the petitioner has submitted photographs and some joint documents showing a shared banking account, insurance, and bills, his testimonials only briefly describe meeting his wife and do not discuss his courtship, subsequent engagement, marriage ceremony, joint residence, or any of his shared experiences with his K-G- in any probative detail. Likewise, the statements of his pastor, mother-in-law, and friends do not provide insight about his feeling for K-G- and their courtship and marriage. Accordingly, the evidence in the record is insufficient to demonstrate that the petitioner's entry into marriage with K-G- was in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

In his first letter, the petitioner recounted that when they moved to the house at [REDACTED] K-G- was angry that his former wife stored her belongings in the house's basement. The petitioner generally recalled that K-G- hit him on the head with a stapler during an argument about the basement, causing a "bump" on his head, but he has not described the incident or his injury in detail. The petitioner briefly recounted that his wife threatened to have someone "come after" him, "jabbed" him with a needle to get "the devil" out of him, slapped him, let a bookshelf drop on his toe, caused him to hit his head and shoulders on the stairway rail, and threatened to have him deported. In his second letter, he stated that K-G- denied him access to the basement by changing the locks on the basement door, and locked him out of their home. He further stated that during this incident she threw a set of keys at him, resulting in a lump on his chest.

The petitioner submitted a prescription for an ultrasound, the ultrasound results, and photographs regarding the incident where K-G- purportedly threw keys at him. The prescription for the ultrasound indicated the doctor's diagnosis as "gynecomastia." The results of the breast imaging study reported that the mass on the petitioner's right breast was "BENIGN (NOT CANCER)." The photographs taken of the petitioner's head after the claimed incident with the stapler are blurred and therefore are insufficient to document a "bump" on his head. In addition, the petitioner submitted a psychological assessment by [REDACTED] a certified mental health screener, certified clinical supervisor, and licensed clinical alcohol and drug counselor. Mr. [REDACTED] diagnosed the petitioner with depressive disorder and generally reported that K-G- used "abusive and degrading language," was physically abusive and "abused drugs which caused considerable emotional harm" to the petitioner. However, Mr. [REDACTED] does not provide any additional details or descriptions beyond those previously discussed by the petitioner.

The petitioner also submitted letters from Ms. [REDACTED] Ms. [REDACTED], and his friends. Ms. [REDACTED] generally stated that she provided marital counseling to the couple, and after the petitioner told her that K-G- threw a bunch of keys at him, she felt "a small lump" under his breast. Ms. [REDACTED] Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] recounted that the petitioner told them that K-G- threw a bunch of keys at his chest and showed them the swelling on his chest. Mr. [REDACTED] further stated that the petitioner told him that K-G- hit him with a stapler and showed him a "bump" on his head. Mr. [REDACTED] generally stated that the petitioner told him K-G- insulted the petitioner, was aggressive

towards him, and hit him with a stapler. None of the letters submitted on the petitioner's behalf provide detailed information about the alleged physical or emotional abuse. Although the letters indicate that the petitioner showed them a "lump" on his chest or a "bump" on his head, they do not describe any alleged occurrence related to them by the petitioner in detail.

On appeal, the petitioner contends that although it is not shown in his report, his doctor told him the swelling on his chest could have been generated by an internal injury and that the director erroneously concluded that the lump on his chest was not caused by his wife. Contrary to the petitioner's contention, the doctor's notation for an ultrasound of the petitioner's chest indicated that he was diagnosed with gynecomastia. The petitioner submits no evidence to connect his gynecomastia diagnosis with the claimed abuse.

Upon a full review of all the relevant and credible evidence, the petitioner has not demonstrated, by a preponderance of the evidence, that he was subjected to battery or extreme cruelty during his marriage to K-G-, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has not demonstrated that he resided with his wife, entered into marriage with her in good faith, and was subjected to battery or extreme cruelty by her during their marriage.

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 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.