



U.S. Citizenship
and Immigration
Services

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DATE: JUN 26 2015

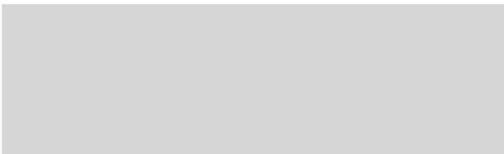
FILE #: [REDACTED]

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:



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 Director, Vermont Service Center (the director), denied the immigrant visa 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 his U.S. citizen spouse.

The director denied the petition based on the petitioner's failure to establish that he resided with his wife and that he married her in good faith.

On appeal, the petitioner submits a brief.

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:

(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 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, a citizen of Trinidad and Tobago, last entered the United States on April 30, 2011, as a nonimmigrant visitor. He married S-W-¹, a U.S. citizen, on [REDACTED] 2013, in [REDACTED] New York, and filed the instant Form I-360 self-petition on August 2, 2013. The director subsequently issued a request for additional evidence (RFE) of joint residence, battery or extreme cruelty, and good-faith entry into the marriage, among other documentation. The petitioner responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought. The director denied the petition finding that the petitioner failed to establish that he resided with his wife and that he married her in good faith. Thereafter, the petitioner filed a motion to reopen and reconsider the director's denial. In the decision on the motion, the director affirmed the previous decision to deny the Form I-360 self-petition on the stated grounds. The petitioner timely appealed the director's denial.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. *De novo* review also reveals that the evidence of record does not demonstrate that the petitioner's wife battered him or subjected him to extreme cruelty. The appeal will be dismissed for the following reasons.

Joint Residence

The preponderance of the relevant evidence fails to establish that the petitioner and S-W- resided together during their marriage. On the Form I-360 self-petition, the petitioner stated that he resided with S-W- from January 2013 until April 2013 at a residence on [REDACTED] New York. The petitioner did not provide a personal affidavit with his initial submission, but included a receipt for an engagement ring in the names of him and S-W- with the [REDACTED] address.² The receipt is dated December 29, 2012, which is prior to the time period during which the petitioner claims that he resided with S-W-. The Certificate of Marriage Registration, also provided in the initial submission, lists S-W-'s address as an apartment on [REDACTED], New York. In response to the RFE, the petitioner submitted a personal affidavit, but did not discuss the couple's marital residence. The petitioner also provided four one-paragraph affidavits from acquaintances who briefly attest to attending a party at the couple's home, but do not include a substantive description of the occasion or the residence.³ When viewed in its totality, the preponderance of the relevant evidence does not demonstrate that the petitioner and S-W- resided together during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

¹ Name withheld to protect the individual's identity.

² The receipt, dated prior to the couple's wedding, bears S-W-'s married name.

³ The affidavits from [REDACTED] and [REDACTED] indicate that both affiants misspelled their own names. Three of the four affidavits contain numerous similar grammatical errors and the same notary stamp, suggesting they were prepared by the same individual, which detracts from their credibility.

Entry into the Marriage in Good Faith

Evidence in the record does not establish that the petitioner married S-W- in good faith. As previously noted, the petitioner did not submit a personal affidavit with his Form I-360 self-petitioner's initial submission. He provided two receipts in his and S-W-'s names, dated in the month prior to the marriage, for an engagement ring and an electronic item. The receipt for the electronic item, without any context provided by the petitioner, does little to demonstrate his intent in marriage. The petitioner also submitted several unlabeled photographs of what appear to be his wedding ceremony. The petitioner submitted a Psychoemotional & Marital Dynamics Assessment, prepared by [REDACTED]. In the assessment, Mr. [REDACTED] briefly recounted that the petitioner reported that he met S-W- when she was providing home health aide services to his stepfather. Mr. [REDACTED] further recounted that the petitioner stated that he was attracted to S-W-, that they got along well, and that during their courtship, the couple went to movies and restaurants. Mr. [REDACTED] evaluation does not contain a probative account of the petitioner's courtship, wedding ceremony, joint residence and experiences sufficient to demonstrate that the petitioner married S-W- in good faith.

In response to the RFE, the petitioner submitted a personal affidavit in which he briefly stated that he met S-W- at his stepfather's apartment where she worked as a health aide, and the two fell in love. The petitioner did not further describe his courtship or any other aspects of his relationship with S-W- beyond the details of the claimed abuse. The petitioner submitted four one-paragraph affidavits from acquaintances. The affidavits from [REDACTED] and [REDACTED] do not attest to personal knowledge of the petitioner's intent in marriage. [REDACTED] stated that he hung out with the petitioner and S-W-, but did not substantively describe any specific occasion that he spent with them beyond one incident of claimed abuse. [REDACTED] noted that he went out to dinner with the couple in January 2013, but did not provide a probative description of the time they spent together, and did not offer any personal knowledge of the petitioner's intent in marriage. In response to the RFE, the petitioner also submitted a second evaluation from Mr. [REDACTED]. The evaluation reports that the petitioner indicated that he and S-W- dated for several months before marrying in [REDACTED] 2013, but does not provide further probative information regarding the petitioner's intent in marriage.

De novo review of the record does not establish that the petitioner married S-W- in good faith. To demonstrate good-faith entry into marriage under section 204(a)(1)(A)(iii) of the Act 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. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). Here, neither the petitioner's personal affidavit, nor those of his four acquaintances, contains probative information regarding the couple's courtship, wedding reception, and other shared experiences beyond the claimed abuse. The brief statements of record are not supported by other evidence that is sufficient to demonstrate the petitioner's intent in marriage. The preponderance of the relevant evidence fails to establish that the petitioner entered into marriage with S-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We hereby notify the petitioner that, although not identified by the director in her decision, *de novo* review of the record shows that the preponderance of the relevant evidence does not establish that the petitioner was battered or subjected to extreme cruelty by his U.S citizen spouse.⁴ With his initial Form I-360 self-petition submission, the petitioner provided a Psychoemotional & Marital Dynamics Assessment prepared by licensed mental health counselor [REDACTED]. In his report, Mr. [REDACTED] recounted that S-W-'s mother did not approve of the couple's relationship. Mr. [REDACTED] stated that S-W- criticized and insulted the petitioner, and threatened to divorce him and to have him deported. According to Mr. [REDACTED] the petitioner suspected that S-W- was having an affair with another man. Mr. [REDACTED] indicated that S-W- slapped and pushed the petitioner, and threw small items at him, but did not substantively describe any specific incident of abuse. Mr. [REDACTED] stated that S-W- left the relationship in March 2013. Mr. [REDACTED] diagnosed the petitioner with a "mixed posttraumatic and anxious-depressive condition."

In response to the RFE, the petitioner submitted a personal affidavit in which he stated that during arguments, S-W- slapped and kicked him, locked him out of the couple's bedroom, and threatened to call the police and have him deported. The petitioner indicated that S-W- threw a perfume bottle at him on one occasion. The petitioner stated that S-W-'s mother did not like him, and refused to pay for S-W-'s schooling if she remained married to the petitioner. The petitioner indicated that S-W- ultimately abandoned the marriage. The petitioner's acquaintance, [REDACTED] attested to seeing S-W- yell at the petitioner at a party and threatened to leave him. Another acquaintance, [REDACTED] also stated that she observed S-W- argue with the petitioner at a party and throw a bottle of body lotion at him. The petitioner's friend, [REDACTED] stated that during an argument, the petitioner blocked S-W- from exiting the residence because she would not tell him what time she planned to return, and S-W- hit him. Acquaintance [REDACTED] indicated that S-W- was "verbally abusive" toward the petitioner on one occasion, but did not provide probative information regarding the incident. The one-paragraph affidavits from [REDACTED] and [REDACTED] provide minimal description of these incidents. Also in response to the RFE, the petitioner submitted an addendum from Mr. [REDACTED] to his prior report, in which Mr. [REDACTED] repeated information previously provided, and further noted that S-W- refused to engage in intimate relations with the petitioner.

De novo review of the relevant evidence, described above, does not establish the S-W- battered the petitioner or subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's affidavit, Mr. [REDACTED] reports, and the affidavits from the petitioner's four acquaintances generally indicate that the petitioner and S-W- argued, that S-W-

⁴ 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).

sometimes became aggressive, that she threatened to leave the petitioner and have him deported, and that she refused to engage in intimate relations. None of the affidavits or reports substantively describes specific incidents of abuse sufficient to establish that S-W- engaged in acts of violence or a pattern of violence toward the petitioner. When viewed in the totality, the preponderance of the relevant evidence does not establish that S-W- battered the petitioner or subjected him to extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. We hereby notify the petitioner of this additional deficiency in the evidence of record, not identified by the director in her decision, which precludes approval of the self-petition.

Conclusion

The petitioner has not overcome the director's grounds for denial. The petitioner has not established that he resided with his U.S. citizen spouse, and that he entered into their marriage in good faith. Further, the record does not demonstrate that the petitioner's spouse battered him or subjected him to extreme cruelty. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.