



U.S. Citizenship
and Immigration
Services

(b)(6)

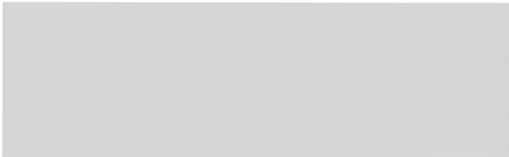


Date: **MAR 26 2015** Office: VERMONT SERVICE CENTER File: 

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:

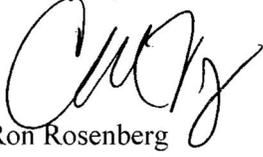


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


for Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be granted and our previous decision will be affirmed. The appeal will remain 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 because the record failed to demonstrate that the petitioner entered into the marriage with his wife in good faith and that she subjected him to battery or extreme cruelty during their marriage. On appeal, we affirmed the director’s decision. On motion, the petitioner submits a brief and previously submitted 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 explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 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.

* * *

(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 the Philippines who claims to have entered the United States on June 7, 2000, as a nonimmigrant visitor. The petitioner married M-M-¹, a U.S. citizen, on [REDACTED] 2011, in [REDACTED] California. The petitioner filed the instant Form I-360 self-petition on June 29, 2012. The director found the evidence insufficient to establish the petitioner's eligibility and denied the petition. We affirmed the decision of the director on appeal.

The motion to reconsider is granted.

We conduct appellate review on *a de novo* basis. A full review of the record fails to establish the petitioner's eligibility. We will dismiss the appeal and the petition will remain denied for the following reasons.

Entry into the Marriage in Good Faith

On motion, the petitioner fails to establish that he married M-M- in good faith. The relevant evidence in the record below contained: a joint automobile insurance policy; joint telephone and utility bills; a church registration letter addressed to the petitioner and M-M-; life insurance policies for the petitioner and M-M-; three cards addressed to the couple; and seven photographs of the petitioner and M-M- taken at one, unidentified location. While these documents reflected that the petitioner and M-M- at some point resided together and shared some joint finances, the petitioner failed to provide a credible, probative account of how he first met M-M-, their courtship, wedding ceremony, joint residence and shared experiences. On motion, the petitioner did not address these concerns.

On appeal, we noted that the record contained inconsistencies with respect to the petitioner's initial meeting with M-M- and their marital residence. The petitioner stated in his personal statements that in 2010 he met M-M- with friends at a comedy club in [REDACTED] California. A clinical evaluation report signed by Drs. [REDACTED] and [REDACTED] of the [REDACTED] however, indicated that the petitioner stated he was introduced to M-M- by his permanent resident relatives. On motion, the petitioner states that in his culture, old family friends are considered to be distant relatives, and that this minor inconsistency does not mean that he did not marry M-M- in good faith. However, the petitioner did not further describe his long friendship with the people he considered to be his relatives, give any particulars about his relationship to them, or give further probative details about the evening he first met M-M-.

With respect to inconsistencies about the couple's joint residence, the petitioner indicated that the couple rented a single room from a family in [REDACTED], California, and that this place was meant to be temporary. In the clinical evaluation, Drs. [REDACTED] and [REDACTED] stated that the petitioner told them that he and M-M- rented a single family home in [REDACTED] after they married on [REDACTED] 2011, and established their home there. [REDACTED], the landlord of the [REDACTED] property, stated that the petitioner moved to the [REDACTED] property in February 2011. The petitioner, however, stated that he moved a few things to the [REDACTED] address in February 2011, but did not move there until his first wife and family

¹ Name withheld to protect the individual's identity.

vacated their apartment in [REDACTED] California at the end of May 2011. On motion, the petitioner did not address inconsistencies in the record about where the couple lived following their marriage.

On motion, the petitioner submits the declaration previously submitted on appeal which we previously noted did not provide a consistent, credible and probative account of how he first met M-M-, their courtship, wedding ceremony, joint residence and shared experiences, apart from the claimed abuse. The petitioner asserts on motion that we must consider any credible evidence, that we may not be selective about which evidence we choose to consider, and that the totality of the evidence establishes that the petitioner had good faith intentions in marrying the petitioner. When determining whether or not the petitioner has met his or her burden of proof, United States Citizenship and Immigration Services (USCIS) shall consider any relevant, credible evidence. However, the determination of what evidence is credible and the weight to be given that evidence shall be within our sole discretion. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Here, the petitioner fails to provide further probative details to overcome the deficiencies in the evidence previously noted. Accordingly, the petitioner has not demonstrated by a preponderance of the evidence that he entered into marriage with M-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

On motion, the petitioner has not established that M-M- subjected him to battery or extreme cruelty. The petitioner states that we erred in finding inconsistencies in the record with respect to how he first met M-M- and by implication not finding him credible with respect to the abuse he endured. Our decision that the record did not establish battery or extreme cruelty was not based on the petitioner's lack of credibility. On appeal, the petitioner described how M-M- had a drug addiction, that she insulted and threatened him, was violent, threw things and called him names. The petitioner also stated that M-M- refused to attend his immigration interview. The petitioner did not further provide any probative, detailed information about specific instances of battery or extreme cruelty as those terms are defined in the regulations. The petitioner's former landlord, [REDACTED] stated in his letter that he noticed problems between the petitioner and M-M- in December 2011, and that his parents told him that they heard the couple having arguments. Mr. [REDACTED] did not describe personally witnessing any specific incidents of abuse or otherwise provided any substantive information regarding M-M-'s treatment of the petitioner.

The petitioner's doctor, Dr. [REDACTED] diagnosed the petitioner in September 2013 with an elevated serum cholesterol level, LDL, triglycerides, uric acid, blood sugar and an abnormal liver enzyme. She did not indicate that the petitioner's medical conditions were related to the claimed abuse. In the psychological evaluation, Dr. [REDACTED] and Dr. [REDACTED] diagnosed the petitioner with post-traumatic stress disorder and major depression. They stated that the petitioner recounted that M-M- argued about their finances, called him names, threatened to harm him, withheld sexual relations from him and abandoned him. While we do not question the professional expertise of Dr. [REDACTED] and Dr. [REDACTED] the evaluation was based on the petitioner's statements and did not further provide a probative description of the alleged threats or any incidents of battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

On motion, the petitioner reasserts that M-M- subjected him to threats and physical abuse during their marriage. The petitioner did not, however, provide probative, detailed information of any battery or extreme cruelty. He does not submit any additional relevant evidence. Accordingly, the petitioner has not established by a preponderance of the evidence that M-M- 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 motion, the petitioner failed to establish his entry into the marriage with M-M- in good faith and his battery or extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, 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). Here, that burden has not been met. Consequently, the appeal will remain dismissed and the petition will remain denied.

ORDER: The motion is granted. The July 30, 2014, decision of the Administrative Appeals Office is affirmed, the appeal is dismissed, and the petition remains denied.