



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

MAY 18 2015

FILE #:

PETITION RECEIPT #:

IN RE:

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:



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 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 his wife battered him or subjected him to extreme cruelty.

On appeal, the petitioner submits a statement.

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:

(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. . . .

* * *

(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 Jordan, entered the United States on September 22, 2003 as a nonimmigrant visitor. He married M-J¹, a U.S. citizen, on [REDACTED] 2004 and filed the instant Form I-360 self-petition on October 4, 2006. The director subsequently issued a request for additional evidence (RFE) of joint residence, battery or extreme cruelty, and good-faith entry into the marriage. The petitioner responded with additional evidence, which the director found

¹ Name withheld to protect the individual's identity.

insufficient to establish eligibility for the benefit sought. The director denied the self-petition on the ground that the petitioner failed to demonstrate that his wife battered him or subjected him to extreme cruelty. The petitioner timely appealed.

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. In addition, beyond the director's decision, we find that the record does not establish that the petitioner married his spouse in good faith. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The director correctly determined that the petitioner did not establish that M-J- battered him or subjected him to extreme cruelty. In a letter dated May 19, 2005, clinical psychologist [REDACTED] reported that M-J- abused drugs and alcohol, and demanded money and expensive gifts from the petitioner. Dr. [REDACTED] stated that prior to the couple's immigration interview, M-J- appeared anxious, and disappeared shortly after the interview. Dr. [REDACTED] related that after the petitioner was informed that M-J- withdrew her immigration petition, the petitioner fell into a deep depression. Dr. [REDACTED] indicated that the petitioner's test results on the Beck Depression Inventory confirmed that the petitioner was severely depressed.

In response to the RFE, the petitioner submitted an undated personal affidavit stating that two months after he and M-J- wed he discovered that she had a substance abuse problem. The petitioner recounted that M-J- instigated arguments, demanded money and gifts, and belittled the petitioner when she was angry. The petitioner indicated that M-J- became physically aggressive during arguments, but did not provide a probative description any specific incidents. The petitioner also stated that M-J- was highly controlling, but did not substantively explain her behavior or its effect on his life. The petitioner recounted that M-J- abandoned the marriage on the day of the couple's immigration interview, after withdrawing her petition.

Also in response to the RFE, the petitioner submitted an additional copy of Dr. [REDACTED] letter, discussed above. In addition, the petitioner provided seven affidavits from friends and neighbors, but none attested to knowledge of M-J-'s abuse.

The director determined that the petitioner failed to establish that his wife battered him or subjected him to extreme cruelty and denied the petition. On appeal, the petitioner asserts that the director failed to give appropriate weight to his personal affidavit and Dr. [REDACTED] letter. However, a full review of the evidence shows that the director did not err. The preponderance of the relevant evidence does not establish that M-J- 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). In his affidavit, the petitioner represented that M-J- used drugs and alcohol, demanded money from the petitioner, and argued with him. The petitioner indicated that M-J- was aggressive and controlling at times, but neither he, nor Dr. [REDACTED] substantively described any incidents or patterns of behavior constituting battery or extreme cruelty. We do not question Dr. [REDACTED] professional judgment that the petitioner suffered from severe depression. However, Dr. [REDACTED] letter does not establish that the cause of the petitioner's depression was battery or extreme cruelty as contemplated by the instant statute and

regulations. When viewed in the totality, the relevant evidence does not demonstrate that M-J- battered the petitioner or subjected him to extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

Beyond the director's decision, the preponderance of the relevant evidence does not demonstrate that the petitioner married M-J- in good faith.² With his initial Form I-360 self-petition submission, the petitioner provided a bank letter verifying that he opened a joint checking account with M-J- on [REDACTED] 2005, two days before the couple separated. He also submitted undated, unlabeled photos of him and M-J- at their courthouse wedding ceremony, and on three other occasions. In response to the RFE, the petitioner provided an undated personal affidavit in which he stated that he met M-J- in "early 2003," that he was instantly attracted to her, and that the couple dated for seven months before marrying. The petitioner did not further describe their courtship, wedding ceremony, shared residences, or any shared experiences beyond the details of the claimed abuse. The petitioner submitted a bank document confirming that the couple opened a joint account on [REDACTED] 2005. In addition, the petitioner provided several affidavits from friends and neighbors attesting to his joint residence with M-J-, but none of the affiants substantively described shared experiences with M-J- and the petitioner or provided insight into his intent in marriage.

The preponderance of the relevant evidence does not establish that the petitioner married M-J- in good faith. The petitioner presented evidence that he opened a joint bank account with his spouse two days before the couple separated, which does not demonstrate that the couple comingled their finances. Traditional forms of joint documentation are not required to demonstrate a self-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 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 friends and neighbors, contains a substantive discussion of the couple's courtship, wedding reception, shared residence, or experiences. In the absence of other probative evidence, the unlabeled photographs of M-J- and the petitioner are not sufficient to satisfy the petitioner's burden of proof. When viewed in the aggregate, the preponderance of the relevant evidence does not establish that the petitioner entered into marriage with M-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The petition will be denied for this additional reason.

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); *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).

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NON-PRECEDENT DECISION

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Conclusion

The petitioner has not overcome the director's ground for denial. In addition, beyond the director's decision, the record does not demonstrate that the petitioner married his spouse in good faith. The petitioner is therefore 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.