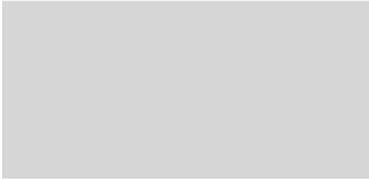


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **MAY 20 2015**



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)

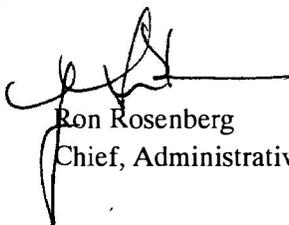
ON BEHALF OF PETITIONER:



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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before us on a combined motion to reopen and reconsider. The motion will be denied.

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 former U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with his spouse during their marriage and married her in good faith. On appeal, we concluded that the preponderance of the relevant evidence demonstrated that the petitioner had resided with his wife, but the petitioner had not established that he married her in good faith. We further noted that, beyond the director's decision, the relevant evidence did not demonstrate that the petitioner had been battered or subjected to extreme cruelty by his spouse.

On motion, the petitioner submits a brief and 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 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 for an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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 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 Gambia who last entered the United States on July 31, 2003, as a nonimmigrant visitor. The petitioner married S-J-¹, a U.S. citizen, on [REDACTED] in [REDACTED] County, Minnesota. The marriage ended in divorce on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on June 28, 2011. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's joint residence with S-J- and his good faith entry into the marriage. Through counsel, the petitioner timely responded to the RFE's with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

During our *de novo* appellate review, we determined that record established the petitioner's joint residence with his former wife, but did not demonstrate that he married her in good faith. In addition to upholding one of the director's original grounds for denial, we observed that although not identified by the director, the record also failed to establish that the petitioner was battered or subjected to extreme cruelty by his former wife. We hereby incorporate by reference our November 5, 2014 decision.

The petitioner now files a combined motion to reopen and reconsider. On motion, the petitioner submits an additional personal affidavit, a transcript from his divorce proceedings, and photographs. Although the petitioner has submitted new evidence on motion, it does not establish his eligibility. Further, the petitioner's submission does not meet the requirements for a motion to reconsider. The petitioner does not cite binding precedent decisions or other legal authority establishing that the AAO's prior decision incorrectly applied the pertinent law or agency policy, nor does he show that the AAO's prior decision was erroneous based on the evidence of record at the time. A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). Accordingly, the petitioner's motion to reopen and reconsider will be denied for the following reasons.

Entry into the Marriage in Good Faith

In our November 5, 2014 decision, we noted inconsistencies in the petitioner's personal statements with respect to the circumstances under which he met S-J-, and observed that the statements did not describe in probative detail the couple's courtship, wedding ceremony, or shared residence and experiences apart from the claimed abuse. We further noted that in her affidavit, S-J-'s mother, [REDACTED] stated that she got to know the petitioner approximately three months after he and S-J- married and, therefore, [REDACTED] had no personal knowledge of the couple's relationship or the petitioner's marital intentions. In addition, we observed that in the absence of a more detailed, probative statement from the petitioner regarding his marital intentions, the joint bank account statement and joint income tax returns for four years were not sufficient evidence to establish his good faith intent to marry.

On motion, the petitioner submits an additional personal affidavit, dated December 1, 2014. However, this personal affidavit does not contain further probative information regarding the

¹ Name withheld to protect the individual's identity.

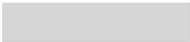
couple's courtship, wedding ceremony, shared residences or experiences, beyond the details of the claimed abuse. The petitioner's new affidavit indicates that he was not privy to many important details about S-J-'s life when he married her. For example, he states that she was living in [REDACTED] and was asked to move out, but that he did not know why. The petitioner also states that he learned that S-J- was pregnant with her daughter [REDACTED] "a month or two before [they] officially got married." The petitioner states that he was stunned to learn that he was not the father. However, also in support of his motion, the petitioner submitted a transcript of his and S-J-'s divorce proceedings, which reveals that [REDACTED] was born on [REDACTED] seven months before the petitioner and S-J- married. In the petitioner's first affidavit, he indicated that he had met [REDACTED] prior to the couple's marriage. According to the transcript of the petitioner's divorce proceedings, S-J- did not have another child until [REDACTED]. Inconsistencies aside², the affidavit does not provide further insight into the couple's courtship beyond the general information already provided. The petitioner's additional affidavit, the divorce transcript, and the photos of the couple's wedding ceremony, when considered in the totality with the other evidence of record, are not sufficient to establish that the petitioner married S-J- in good faith, as required by section by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

On motion, the petitioner asserts that we erred as a matter of law in going beyond the director's decision to determine that the record did not establish that the petitioner was battered or subjected to extreme cruelty by his former wife. However, the petitioner does not identify any precedential authority that would require us, in our *de novo* review, to remand a matter to the service center when we concur with at least of the director's original grounds for denial. Our decision on appeal serves as notice to the petitioner of additional deficiencies in his evidence of record that must be overcome for the petitioner to prevail on motion.

Neither the petitioner's affidavit submitted on motion, nor his brief, resolves the deficiencies in the evidence that we noted in our November 5, 2014 decision with respect to the claimed battery or extreme cruelty. The petitioner's prior affidavits failed to describe in probative detail any particular incident of battery, and conflicted with other evidence in the record. The petitioner's additional affidavit submitted on motion does not resolve these concerns. With respect to the main incident of abuse that the petitioner has alleged, a beating on March 28, 2011 by S-J- and her siblings, the documentation submitted on motion does not explain why the hospital records he submitted indicated that hospital personnel found no evidence of physical injuries.

² We consider the petitioner's submission of the court transcript from his divorce proceedings a request by him for us to review the document and determine its evidentiary value to the merits of his assertions that he entered into his marriage in good faith and was battered or subjected to extreme cruelty by S-J- during their marriage. Information in this transcript calls into question some of the petitioner's statements with respect to his relationship with S-J-. The divorce proceedings transcript indicates that the couple ceased to reside together in November 2007, shortly after they married. Thus, it is not apparent that the petitioner's statements that the couple lived together in [REDACTED] later in the marriage were accurate. The divorce court proceeding further suggests that the petitioner and S-J- had an arrangement in 2011 whereby in exchange for adding his name to her lease, and he would give her part of the couple's 2010 tax refund. The record reflects that the petitioner submitted a lease signed by S-J- on June 16, 2009, and signed by the petitioner on March 25, 2011.



When viewed in the totality, the preponderance of the relevant, as supplemented on motion, does not establishing that S-J- battered the petitioner or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On motion, the petitioner has not established that he married his former wife in good faith or that she battered him or subjected him to extreme cruelty. Consequently, the petitioner remains 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.

ORDER: The motion is denied. The November 5, 2014 decision of the Administrative Appeals Office is affirmed. The petition remains denied.