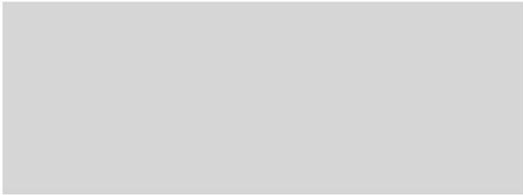


(b)(6)

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:



INSTRUCTIONS:

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 Acting Director, Vermont Service Center, (“the director”) revoked approval of the immigrant visa petition after properly notifying the petitioner. The Administrative Appeals Office (AAO) dismissed the petitioner’s appeal and denied a subsequent motion to reopen and reconsider. The matter is now again before the AAO on a motion to reconsider. The motion will be denied.

The petitioner seeks immigrant classification under 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 United States citizen spouse.

The director revoked approval of the petition for failure to establish that the petitioner entered into marriage with his U.S. citizen wife in good faith. We affirmed the director’s decision and dismissed the appeal and a subsequent motion to reopen and reconsider. On this second motion to reconsider, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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:

(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.

* * *

(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 Ghana who last entered the United States on April 25, 2004, on a B-2 nonimmigrant visitor's visa. He married S-W¹, a citizen of the United States, on [REDACTED] in [REDACTED] Virginia, and the two were subsequently separated. The petitioner filed the instant Form I-360 self-petition on March 26, 2008 and it was approved on March 18, 2010. The director issued Notices of Intent to Revoke (NOIR) approval of the self-petition on July 24, 2012 and April 8, 2013, and notified the petitioner that his petition was granted in error, as a full review of the administrative record demonstrated that he had not established his good faith intentions in marrying his wife. The petitioner timely responded to the NOIRs. However, the director found the responses insufficient to overcome the proposed ground for revocation, and revoked approval of the petition on August 12, 2013. The petitioner timely appealed. We dismissed the appeal and denied a subsequent motion to reopen and reconsider. The petitioner has now filed a second motion to reconsider and submits a supporting brief and previously proffered photographs.

As explained below, 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

¹ Name is withheld to protect the individual's identity.

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. Consequently, the motion to reconsider must be denied. See 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

We review these matters on a *de novo* basis. A full review of the record, including the evidence submitted on motion, fails to establish the petitioner's eligibility. Approval of the petition will remain revoked for the following reasons.

Entry into the Marriage in Good Faith

In our prior decisions of February 20, 2014 and November 3, 2014, we determined that the petitioner failed to demonstrate his good faith intentions in marrying his wife, S-W-. Our initial decision on appeal, incorporated here, considered all the relevant evidence in the record and described in detail the deficiencies therein. In sum, while we acknowledged the joint financial documentation and evidence in the record that the petitioner resided with S-W-, we also specifically found them insufficient because they contained inconsistencies, showed little financial transactional activity, and several of the documents were from a period after the couple separated. Further, we determined that the petitioner's statements did not sufficiently establish his good faith intentions, as they did not describe in probative detail how he met S-W- and their courtship, engagement, wedding, joint residence and shared experiences, apart from the abuse. Similarly, we found that the brief letters of the petitioner's friends lacked the substantive information and detailed knowledge of the petitioner's relationship with S-W- to evidence his good faith intent. In our decision on motion, we affirmed our initial determination and addressed the deficiencies of the petitioner's new statement and photographs submitted on motion, including inconsistencies therein.

In the instant motion to reconsider, the petitioner asserts that we committed factual and legal error in our decision on his first motion, where we found that the petitioner's written statement, submitted with that motion, still lacked probative details about the petitioner's relationship with his wife. After a full review of the record, we disagree and reaffirm our prior determination that while the petitioner's statements discuss the claimed abuse and set forth a general timeline of his history with S-W-, including their initial meeting and engagement, they do not describe in probative detail their lengthy courtship, joint residence, and shared experiences as asserted. The petitioner has not cited to any binding precedent decisions or other legal authority to show we incorrectly applied the pertinent law or agency policy in our prior determination regarding the insufficiency of his written statements. Further, as we also noted in our former decision, the petitioner's statement on motion also raised another inconsistency in the record. The statement, which described the petitioner's wedding ceremony and following reception as having been attended by several guests at his apartment, is inconsistent with the photographs he submitted depicting the petitioner, his wife, and his sister-in-law eating dinner at a Chinese buffet the night of their wedding. There are no photographs of the reception the petitioner described in his statement. On motion, the petitioner contends that we committed factual error because the noted discrepancies are not supported by the record. The petitioner asserts that the wedding reception took place from noon to sunset while the dinner at the Chinese buffet depicted in the photographs happened afterwards that night; however, this explanation is insufficient to overcome the

noted discrepancy between his prior statement and the photographs of the events following his wedding ceremony.

The petitioner also contends that the petitioner is required only to establish his claims with “any credible evidence” and that the law requires us to accept the petitioner’s statement “as competent evidence so long as the statement is credible and the contents are relevant and sufficient to prove that the [p]etitioner married his wife in good faith.” As we noted in our initial decision on appeal, the consideration of any relevant, credible evidence is an evidentiary standard by which United States Citizenship and Immigration Services (USCIS) adjudicates petitions under section 204(a)(1)(A)(iii) of the Act. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). It is not a burden or standard of proof. A self-petitioner must still demonstrate his or her eligibility by a preponderance of the evidence that is applicable to all immigrant visa petitions. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Under this evidentiary standard, we may determine that an affidavit is insufficient to meet a petitioner’s burden of proof when it does not contain probative details or introduces inconsistencies into the record. Contrary to the petitioner’s statement, we are not required to find a written statement sufficient evidence of a petitioner’s good faith entry into his marriage particularly where, as here, we have specifically noted deficiencies and inconsistencies in the record that the petitioner has failed to overcome on appeal and on motion.

In this second motion, the petitioner also misconstrues our prior decisions and states that we did not make a credibility determination regarding the petitioner’s statement and the documentary evidence in the record. The petitioner appears to confuse the “any credible evidence” evidentiary standard at section 204(a)(1)(J) of the Act with credibility determinations for asylum applicants under section 208(b)(1)(B)(iii) of the Act, 8 U.S.C. § 1158(b)(1)(B)(iii). We review the evidence to determine its evidentiary value, and our decision on appeal specifically discussed the discrepancies in the documentary evidence, which the petitioner failed to overcome on his first motion to reopen. Upon further review, we also note here additional discrepancies in the record. For instance, in response to the director’s second Request for Evidence (RFE) of good faith marriage, the petitioner submitted several documents, including a Maryland HMO application he executed on June 5, 2006. Despite having been married for nearly a month at the time he signed the form, the petitioner indicated his marital status as “single” on the application. Similarly, in response to the director’s NOIR, the petitioner submitted letters from his employer, [REDACTED], addressing its failure to timely update the petitioner’s change of address upon his request as an explanation for inconsistencies in the record regarding the petitioner and S-W-’s joint residence. As evidence of the timely request for a change of address, the petitioner submitted copies of his change of address requests made to [REDACTED] each time he moved, including one made on September 6, 2004. However, previous letters from [REDACTED] submitted on in response to the RFE indicates that the petitioner had only been employed with their company since March 7, 2005 – well after the date of the petitioner’s change of address request to [REDACTED]. Further, the petitioner’s employment history with [REDACTED] is also inconsistent with his two Form G-325A, Biographic Forms, in the record. The first Form G-325A, dated November 13, 2006 and submitted with the Form I-130, Petition for Alien Relative, filed on his behalf by S-W-, indicates that he was self-employed as a handyman since January 2006 and makes no reference to his employment with [REDACTED] since 2004 or 2005. The second one, dated March 20, 2008, indicates that he commenced his employment with [REDACTED]

in February 2007. Lastly, a joint bank statement from September 20, 2006 indicates the couple's address as [REDACTED]. However, as discussed in our initial decision, S-W-'s Form G325A, submitted by the petitioner as Exhibit F-3 in these proceedings, indicates that she never resided at that address. Upon full review of the record here, the record fails to overcome these discrepancies in the documentary evidence, as well as those previously set forth in our prior decisions.

The petitioner correctly observes that Congress, recognizing the difficulties battered spouses face in obtaining probative evidence to satisfy their burden, allowed USCIS to consider "any credible evidence" in these proceedings. He maintains that USCIS failed to take Congressional intent into consideration and failed to consider the difficulties the petitioner faces in obtaining new evidence of his good faith intent three years after his petition had initially been approved. The petitioner further asserts that he has been prejudiced by USCIS and the AAO, as our decisions were based on discrepancies in the petitioner and his wife's addresses that have since been rebutted. We recognize the difficulties that a petitioner may face in obtaining traditional forms of evidence regarding his good faith entry into marriage, which is why we consider any credible evidence relevant to the petition. In this matter, the petitioner submitted considerable documentary evidence as well as testimonial evidence, and we considered the probative value of all of the evidence, finding deficiencies that resulted in our prior findings. Our review of the record does not show that we or the director acted contrary to Congressional intent by placing a burden on the petitioner to produce traditional forms of documentary evidence to establish his good faith intent in marrying S-W-. Thus, when viewed in the totality, a preponderance of the evidence of record here does not establish the petitioner's good faith entry into marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On motion, the petitioner has not established that he entered into marriage with his wife in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish 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, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The motion is reconsider is denied. The petition remains denied.