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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: APR 9 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:



Public Copy

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the director, Vermont Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Ivory Coast who is seeking classification as the battered spouse of a United States citizen pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154.

The director denied the petition because the petitioner failed to establish that he entered into the marriage with his U.S. citizen spouse in good faith.

On appeal, counsel submits a brief. The petitioner submits affidavits from individuals whom he claims attest to the bonafides of the marriage between him and his U.S. citizen spouse.

The record indicates that the petitioner was denied asylum status in March 1996 and was placed before the immigration court for removal proceedings. The petitioner married his U.S. citizen spouse in March 1997 while he was under removal proceedings, and his wife subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. In January 2000, the New York district director denied the I-130 petition because the marriage between the two parties did not appear to be bonafide. The petitioner subsequently filed the instant petition in April 2000, which is now before this office for review. The sole issue to be examined is whether the record contains sufficient evidence that the petitioner entered into his marriage with his U.S. citizen spouse in good faith.

8 C.F.R. 204.2(c)(2)(vii) states:

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.

The director found the petitioner's evidence of a good faith marriage to be deficient. First, the petitioner submitted bank statements, which showed that the petitioner and his wife always had a low account balance. Second, the telephone bills, cable

bills and credit card bills that the petitioner submitted were either in the petitioner's name or the wife's name. The director further noted that there was no evidence that these bills were paid from a joint account, which would show that the petitioner and his wife shared responsibility for paying household expenses even though the bills were only in one party's name. Third, the copy of the lease that the petitioner submitted was not signed by the petitioner's wife. Finally, even though the petitioner submitted evidence that he and his wife filed a joint tax return, this sole piece of evidence could not overcome the paucity of other corroborating evidence.

Counsel specifically addresses the director's conclusion regarding the petitioner's and his wife's bank account. Counsel states that because the petitioner's spouse was addicted to drugs, the petitioner could not keep large sums of money in the account from which to pay bills; otherwise, the petitioner's wife would use the money from the account to buy drugs. Counsel also addresses the director's finding about the lease by stating that the absence of the petitioner's wife's name on the lease does not indicate that the marriage was not bonafide. Counsel relies upon several affidavits that were submitted by friends of the petitioner and his wife, and letters that the petitioner's wife wrote to him from prison as evidence that the marriage was entered into good faith.

The evidence and arguments presented on appeal do not overcome the director's objections. This office finds counsel's argument regarding the bank account to be reasonable; nevertheless, the Service is not compelled to disturb the director's decision.

The petitioner submits several affidavits on appeal. One affiant, [REDACTED], only states that she has known the petitioner since 1992 and was present at his wedding. Another affiant, [REDACTED] states that she witnessed the marriage between the petitioner and his wife, and attests that the couple has known each other since 1994. The testimonies of these two affiants do not establish that the intent of the petitioner was to enter into a bonafide marriage with his wife. Neither affiant discusses her knowledge of the relationship between the petitioner and his wife. Each affiant's presence at the petitioner's wedding does not, by itself, establish that the marriage was entered into in good faith.

The petitioner also submits other affidavits from individuals who describe the relationship between the petitioner and his wife as loving; however, this testimony does not overcome the lack of documentary evidence to show that the petitioner and his wife intended to share a life together at the time they were married.

8 C.F.R. 204.2(c)(1)(ix) states:

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.

In this particular case, the Service questions the intent of the petitioner to enter into his marriage in good faith. The record reflects that the petitioner married his wife while he was under removal proceedings after his request for asylum failed before the asylum office in Newark. The petitioner's marriage to his wife while he was under removal proceedings is a negative factor, and the petitioner did not present compelling evidence that would weigh favorably in his behalf. Accordingly, the petitioner has failed to persuade this Service that the marriage was not entered into to circumvent the immigration laws.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the previous decision of the director will not be disturbed.

ORDER: The appeal is dismissed.