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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 I Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 26 2003

FILE: [redacted] Office: Vermont Service Center Date:
EAC 01 029 50230

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, and the previous decision of the Associate Commissioner will be affirmed.

The petitioner is a native and citizen of Bulgaria who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

The director denied the petition after determining that the petitioner failed to establish that he entered into the marriage to the citizen or lawful permanent resident in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H).

The AAO summarily dismissed the appeal on July 8, 2002, after noting that although counsel, on appeal, indicated that he was sending a brief and/or evidence within 30 days, none was received six months later.

On motion, counsel asserts that on January 4, 2002, the petitioner, through counsel, submitted additional evidence as well as legal argument, and that the AAO received the evidence on January 10, 2002. He states that on June 21, 2002, the petitioner mailed additional documentation to the AAO. He submits copies of the evidence furnished. The record of proceeding now contains the original documents received by the AAO on January 10, 2002, prior to the AAO's decision summarily dismissing the appeal.

The record reflects that the director originally denied the petition on November 7, 2001, after determining that the evidence of record was not sufficient to establish that the petitioner's marriage was not entered into in good faith and not solely for the purpose of obtaining permanent resident status. The director based his decision on the evidence of record reflecting that the petitioner was in removal proceeding that began on December 29, 1997; he married his U.S. citizen spouse on January 25, 1998 while he was in removal proceedings; the petitioner entered the United States on August 6, 1993, and he had not resided outside the United States for the required two-year period after January 25, 1998, pursuant to section 204(g) of the Act, 8 C.F.R. 1154(g). Therefore, on January 11, 2001, the petitioner was requested to submit a request for a bona fide marriage exemption, pursuant to

8 C.F.R. § 245.1(c)(9)(iii), with the reason for seeking the exemption, and clear and convincing evidence that his marriage to his spouse was entered into in good faith and not for the purpose of obtaining permanent resident status.

The director noted that the petitioner, in response, did not list the reason he was seeking the exemption; however, he submitted proof that he had shared residence and joint accounts with his spouse. He maintained that the petitioner indicated on his petition that he and his spouse separated on June 14, 2000, and while the evidence submitted rose to the level of credible, the evidentiary burden for this case is higher--that of clear and convincing--due to the involvement of section 204(g) of the Act. The director further noted that although the petitioner and his wife allegedly began residing together in December 1997 and married on January 25, 1998, the majority of the evidence submitted was dated for the year 2000, and that the evidence provided did not show the historical progression. He further noted that the documents did not show the petitioner's intention for the marriage at its inception, as they mostly covered the period immediately preceding his separation from his spouse.

8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that he entered into the marriage to the citizen in good faith.

In response to the director's finding that "the evidence provided does not show the historical progression," counsel submits a lease agreement signed by both the petitioner and his wife [redacted] for the period March 1998 through April 1999; copies of bank statements bearing the names of both the petitioner and [redacted] for the period January 2000 through July 2000; a copy of a telephone bill from April 1999 listing both names on the account; a letter addressed to [redacted] at the couple's address dated June 1, 1998; and statements from [redacted] [redacted] [redacted] and [redacted]

The record reflects that [redacted] (the petitioner) married [redacted] on January 25, 1998. The petitioner indicated on his petition that he and his spouse separated on June 14, 2000. The record of proceeding contains a Service Report of Investigation, dated May 21, 2001, regarding the residence and bona fides of the marriage between the petitioner and [redacted] that indicates:

1. An investigation of a traffic accident involving [redacted] and [redacted] on June 2, 1998, conducted by Employers Insurance of

Nevada, revealed that Mr. [redacted] and [redacted] resided together for several years, and on the date of the accident, they were residing together at [redacted] Subsequent interviews with the apartment manager at [redacted] confirmed that [redacted] was residing at this address with Mr. [redacted] and not with the peitioner as claimed by the petitioner and by his son, [redacted].

2. Included with the petitioner's Form I-360 is a letter from the petitioner's son, [redacted] describing the residential history of and the relationship between [redacted] and the petitioner. The letter indicated that he and his father had been residing at [redacted] since March 1997. He further indicated that [redacted] and the petitioner were married in January 1998 and moved in together and that he moved out of the apartment to live with his girlfriend. In April 1999 he states that his father, [redacted] and he moved into a two-bedroom apartment at the same building in [redacted] He continues that from January 1998 until June 2000, he resided at this address with his father and [redacted]

3. An address check through Choicepoint Information System indicates that in May 1998, [redacted] was residing at [redacted] and in October 1999, she listed [redacted] as her address.

4. Information obtained from a subpoena issued to the [redacted] reveals that the on April 10, 1999, a lease agreement was signed by [redacted] for the petitioner and herself beginning on May 1, 1999 and continuing to May 1, 2000 for apartment #13-2029, and on April 16, 2000, a "short term" lease agreement was signed by [redacted] for herself and the petitioner beginning May 1, 2000 and ending July 2000 for apartment [redacted] [redacted] submitted a letter indicating that as of June 22, 2000 she would be relinquishing her responsibility in apartment [redacted] and further indicating that the petitioner would accept responsibility for this apartment. The report noted that although the petitioner and [redacted] were married on January 25, 1998, a rental lease agreement dated March 30, 1998 for [redacted] identifies only the petitioner as the resident of apartment [redacted] and that prior to this date, the petitioner was residing at [redacted] apartment [redacted]

5. The petitioner's 1998 and 1999 W-2 forms indicate his address as [redacted]

The value of the evidence furnished, including affidavits, is diminished by the Service Investigation Report in establishing the

existence of a good-faith marriage. The inconsistencies in the evidence render the petitioner's claim that he entered into the marriage to the citizen in good faith to be less than credible. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. § 204.2(c)(2)(i).

While documentation contained in the record reflects that the petitioner and his spouse may have resided together at some point, as provided in 8 C.F.R. § 204.2(c)(1)(i)(D), the petitioner has not established that he entered into the marriage to the citizen in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H).

Accordingly, the previous decision of the AAO will be affirmed.

ORDER: The decision of the AAO dated July 8, 2002 is affirmed.