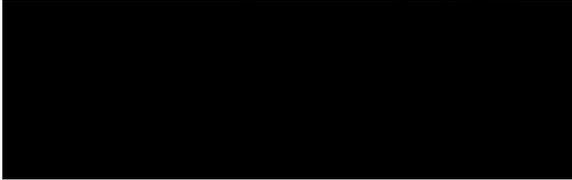


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FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 02 2004**

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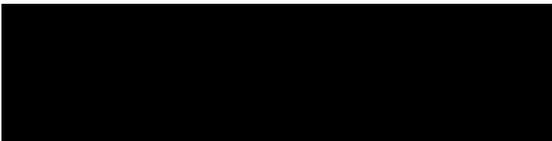
IN RE:

Petitioner:
Beneficiary:



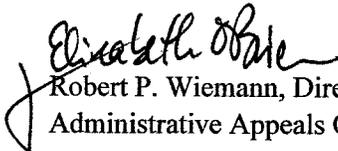
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 35-year old male native and citizen of the Ivory Coast 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, finding that the petitioner failed to establish that he has entered into his marriage with a United States citizen in good faith.

On appeal, counsel for the petitioner submits additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2)(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.

According to the evidence on the record, the petitioner wed United States citizen [redacted] York City on April 11, 2001. On August 26, 2002, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage. According to the Form I-360, the petitioner and his citizen wife resided together from April 2001 until or through August 2001.

The regulation at 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.

Because the petitioner furnished insufficient evidence to establish that he entered into the marriage to the citizen in good faith, he was requested on April 28, 2003, to submit additional evidence. The director listed evidence the petitioner could submit to establish a good faith marriage.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here.

On appeal, counsel for the petitioner submits additional evidence. In review, the evidence is insufficient to establish that the petitioner entered into the marriage to the citizen in good faith. The evidence consists of the following:

- The petitioner's statement explaining previously submitted evidence including his testimony regarding his courtship with his wife.
- An overdue hospital bill dated May 7, 2002, addressed to the petitioner's wife at [redacted]
- A two-paragraph affidavit of a coworker of the petitioner attesting that he observed the petitioner's first contact with his wife and saw them together on "many occasions."
- A two-paragraph affidavit of a former housemate of the petitioner and his wife asserting that they resided together [redacted]

- A greeting card from the petitioner's stepson.
- A greeting card from the petitioner's wife.
- A statement from the petitioner.
- An approved Form I-130 petition filed by the petitioner's wife on his behalf.
- A letter purportedly from the petitioner's wife addressed to "Deli" confessing that she was a drug addict and professing her desire to be reunited with the petitioner.
- Wedding photographs.
- Photographs of the petitioner and his wife together.
- Partial copies of savings account statements listing the petitioner as the account holder in trust for his wife.
- Affidavit of [REDACTED] a former housemate of the petitioner and his wife stating that the latter was verbally abusive towards the petitioner.
- Affidavit of [REDACTED] another former housemate of the petitioner and his wife stating that the petitioner and his wife lived together and shared a common life from April to September 2001.
- Affidavit of a landlord stating that the petitioner and his wife were co-tenants at his property located in Orange, New Jersey from April to September 2001.

It is noted that the petitioner failed to submit insurance policies in which the petitioner or his spouse were named as the beneficiary. The petitioner failed to submit tax records and other documents to show that they shared accounts and other responsibilities. He failed to submit evidence that they jointly owned property. No children were born of the marriage. He failed to submit a lease indicating that the petitioner and his wife were co-tenants. The affidavits submitted are general and lack sufficient detail. In review, the evidence is insufficient to establish that the petitioner married his citizen wife in good faith.

Beyond the decision of the director, the evidence is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by the citizen spouse. For this additional reason, the petition may not be approved.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.