

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY



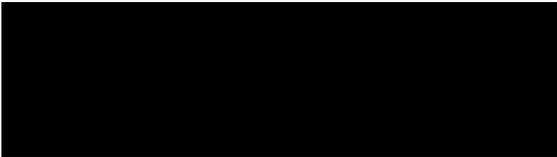
FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 13 2005

EAC 04 066 52593

IN RE: Petitioner: [redacted]  
Beneficiary: [redacted]

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Bolivia 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.

According to the evidence contained in the record, the petitioner wed United States citizen [REDACTED] on December 6, 2002 in Sacramento, California. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on January 30, 2003 and the petitioner subsequently filed a Form I-485, Application to Adjust Status. The petitioner and his spouse failed appear for an interview before the district director and the petitioner was terminated and the application was denied for abandonment. The petitioner's motion to reopen the district director's decision was rejected as it was untimely filed and the district director sustained his original decision to deny the application.

On February 2, 2004, the petitioner filed the instant petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his United States citizen spouse. On the Form I-360, the petitioner indicates that he resided with his spouse from December 2002 until July 2003.

The director denied the petition on December 21, 2004, finding that the petitioner failed to establish that he resided with his United States citizen spouse during the marriage, that he entered into the marriage to the citizen in good faith, and that he was battered by, or the subject of extreme cruelty perpetrated by his spouse.

The petitioner, through counsel, files a timely appeal.

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 spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] 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;

\* \* \*

(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)(1)(i)(E) requires the petitioner to establish that he 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.

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

*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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

Further, the regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

*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 abused 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.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

With the original submission of his petition, the petitioner submitted a statement,<sup>1</sup> a copy of a lease agreement, a copy of the petitioner's spouse's driver's license and social security card, a copy of the petitioner's marriage certificate, pages of his passport, and a letter from the petitioner's mother-in-law.

The director found these documents to be insufficient to establish that the petitioner resided with his spouse, that he entered into his marriage in good faith, and that he was battered by, or the subject of extreme cruelty perpetrated by his spouse. Accordingly, on September 23, 2004, the director requested the petitioner to submit further evidence to establish each of these claims. The director listed specific evidence the petitioner could submit to support his eligibility.

On November 18, 2004, the director received the petitioner's response to the request for evidence. As part of his response, the petitioner submitted copies of documents previously submitted, including his original letter, and the letter from his mother-in-law. The petitioner also submitted the following additional documents:

- A "record clearance" from the City of Sacramento indicating the petitioner has "no criminal arrests."
- A letter from the petitioner detailing his unsuccessful attempt to obtain records about his spouse from the Superior Court of Sacramento and the [REDACTED] Family Relations Courthouse.
- A copy of the petitioner's divorce decree evidencing the termination of his marriage to his citizen spouse.
- A letter of "good reference" from the couple from whom the petitioner rented his room.

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

---

<sup>1</sup> Although [REDACTED] legal assistant to counsel of record, signs a statement at the bottom of the petitioner's letter stating that he has "translated the above affidavit from English to Spanish to [REDACTED]" the record does not contain the original document from which [REDACTED] purportedly made his translation. Further, despite [REDACTED] reference to the letter as an "affidavit," there is no indication that the letter was sworn to or affirmed by the petitioner before an officer authorized to administer oaths or affirmations who has, having confirmed the petitioner's identity, administered the requisite oath or affirmation. Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the petitioner, in signing the statements, certifies the truth of his statement, under penalty of perjury. 28 U.S.C. § 1746.

On appeal, the petitioner submits one new document. The remaining documents, which comprise the petitioner's appellate submission, consist of documents previously submitted.

In review, we find the record insufficient to establish that the petitioner entered into his marriage in good faith, that he resided with his spouse, and that he was battered by, or the subject of extreme cruelty perpetrated by, his spouse.

Rather than submitting any documentary evidence such as bills or joint bank accounts to establish that he entered his marriage in good faith and that he resided with his spouse, the petitioner submits non-specific, unsworn statements. Both the petitioner's statement, and the statement of his mother-in-law contain no details regarding the petitioner's courtship or married life. The petitioner's general statement that his "relationship matured and interests were similar . . . I loved [her], and proposed to her and believed that she loved me," does not provide enough specificity to establish he entered into his marriage in good faith. Similarly, his mother-in-law's only description of the petitioner's courtship and marriage consists of the following statement: "My daughter married [the petitioner] on December 6, [2002]. [Their] union did not work out because of my daughter's alcohol abuse among other things."

The record remains absent evidence of insurance policies in which the petitioner or his spouse is named as the beneficiary, or bank statements or other documents that show that they shared accounts and other responsibilities during the time that the petitioner claims he resided together with his spouse. The petitioner failed to submit evidence of joint ownership of cars or other property. We note that no children were born of the marriage. Although the marriage certificate is evidence of a legal marriage, the fact that a legal marriage took place does not establish that the marriage was entered into in good faith or that the petitioner resided with her spouse after the marriage ceremony.

The single piece of evidence related to the petitioner's claim that he resided with his spouse consists of a rental agreement between the petitioner and his spouse and [REDACTED] and [REDACTED]. As noted by the director, however, the rental agreement, although indicating that the agreement was entered into on March 6, 2003, does not contain the actual date signed by the petitioner and his spouse. The petitioner does not address this deficiency on appeal. Further, despite the petitioner's claim that he resided with his spouse from December 2002 to July 2003, the petitioner provides no evidence or explanation for where he and his spouse resided for the four months prior to the date indicated in the lease agreement with the Solis family.

The lack of evidence demonstrating the commingling of assets or financial liabilities, combined with the scarcity of information about the petitioner's marriage in the petitioner's supporting letters does not lead to a finding that the petitioner entered his marriage in good faith or that he resided with his spouse.

As it relates to the petitioner's claim of abuse, the record contains the petitioner's unsworn statement and the unsworn statements of the petitioner's mother-in-law and acquaintances. In his letter, the petitioner indicates that his wife "behaved rudely and violently." The petitioner then claims that the police were called on three separate occasions but that because his wife "had not struck or assaulted" the petitioner, no report was made by the police. The petitioner also claims that his wife stole money from his wallet and that he moved out

when he found his wife “in a promiscuous sexual position with another man.” In addition to noting that the petitioner makes no claim of physical abuse, we find no corroborative evidence that the petitioner was a victim of verbal abuse or that his wife’s treatment of him rose to the level of extreme cruelty.

Contrary to counsel’s assertion, the petitioner’s mother-in-law’s statement refers only to her daughter’s “alcohol abuse.” The statement makes no reference to any other “abuse toward [the petitioner].” Moreover, while counsel asserts that [REDACTED] was a “witness to the problems in the relationship,” [REDACTED] statement does not indicate that he was a witness to any verbal or physical abuse. Instead, [REDACTED] states that the petitioner’s spouse “did not pay the rent on time,” that she “stole a picnic table and new curtains,” that she was “always drunk,” and eventually “abandon[ed] her husband.” Similarly, the statement from [REDACTED] documents only that the petitioner’s spouse abused alcohol and that “they had problems with the [landlord] due to [the petitioner’s spouse’s] irresponsabilitys [sic] she spend the rent money on something else.” None of the statements submitted in support of the petition document any abuse toward the petitioner

Finally, it is noted that the petitioner's spouse's claimed alcohol abuse and the purported affair between the petitioner’s wife’s and another man do not rise to the level of extreme cruelty.

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.