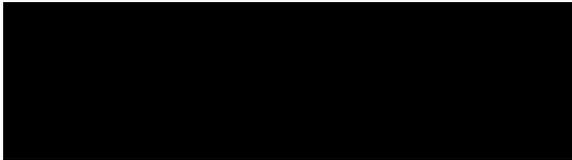


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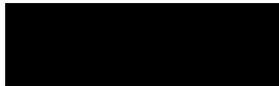
**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



B9

FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 03 2005

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 (Director), Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 40-year old male native and citizen of the Dominican Republic 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 entered into his marriage with his United States citizen spouse in good faith and that he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse.

The petitioner, through counsel, submits 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 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)(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).

Additionally, 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] in Rio Piedras, Puerto Rico on January 24, 1997. On March 7, 2001, a Form I-130 petition was filed on the petitioner's behalf by his citizen spouse. The petitioner's spouse subsequently withdrew the Form I-130 petition, and the Form I-130 and accompanying Form I-485, Application for Permanent Residence, were denied on August 4, 2003. On August 7, 2003, 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 spouse resided together from 1997 to 2002.

Because the petitioner furnished insufficient evidence to establish that he entered into his marriage with a United States citizen in good faith and that he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse, he was requested on July 6, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish each of these claims.

On September 7, 2004, the petitioner responded to the director's request. 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.

On appeal, counsel indicates on the Form I-290B that she needs an additional 30 days to submit a brief/and or evidence related to the petitioner's claim of abuse and/or extreme cruelty. To date, more than three months after the filing of the appeal, the record contains no further submission. We, therefore, consider the record to be complete as it now stands.

As it relates to the issue of whether the petitioner entered into his marriage in good faith, the petitioner submits two affidavits from acquaintances, copies of two purchase orders dated September 15, 2001 and November 21, 2002, respectively, and copies of two undated, uncaptioned photographs of the petitioner and his spouse.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Accordingly, even if counsel had submitted the additional evidence as indicated, under the circumstances, the AAO would not consider the sufficiency of the evidence submitted on appeal.

Regardless, we do not find the evidence contained in the record, including the petitioner's appellate submission, sufficiently establishes that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse or that he entered into his marriage in good faith.

As noted by the director in his decision, the petitioner's description of incidents involving his spouse do not rise to the level of extreme cruelty. Further, the petitioner failed to submit the police report he claimed was filed after the incident with his spouse at his work. The director also noted that as the affidavits submitted by the petitioner were "identical in text" it could not be determined whether the information is "one person's rendition signed by more than one person."

With regard to whether the petitioner entered into his marriage in good faith, despite the fact that the petitioner claims to have resided with his spouse for at least five years, we note that the petitioner failed to submit insurance policies in which the petitioner or his spouse were named as the beneficiary, tax records or other documents to show that they shared accounts and other responsibilities, or evidence that they jointly owned property. Further, the petitioner failed to submit leases indicating that the petitioner and his wife were co-tenants and there is no evidence that any children were born of the marriage. The affidavits submitted attesting to the petitioner's good faith marriage are general and lack sufficient detail. In review, the evidence is insufficient to establish that the petitioner married his citizen wife in good faith.

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