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U.S. Citizenship
and Immigration
Services

B9

MAR 08 2005

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:
EAC 03 097 53515

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:
[Redacted]

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Colombia 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 had resided with the U.S. citizen spouse and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a brief and resubmits evidence previously provided to Citizenship and Immigration Services (CIS).

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)(ix) states, in part:

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.

The record reflects that the petitioner last entered the United States as a B-2 nonimmigrant visitor on March 12, 1993 at Miami. According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on March 8, 1997 in Norwalk, Connecticut. On March 27, 1997, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The district director denied the Form I-130 because he determined that the petitioner had previously entered into a sham marriage. [REDACTED] appealed the director's decision to the Board of Immigration Appeals (BIA). On May 22, 2000, the BIA sustained the appeal and remanded the record to the district director.² On April 21, 2001, while incarcerated, [REDACTED] withdrew her Form I-130 petition. She filed a second Form I-130 on May 21, 2001. On April 25, 2001, an investigation took place regarding the bona fides of the petitioner's marriage to [REDACTED]. Investigators encountered Amanda [REDACTED] at the petitioner's residence. Ms. [REDACTED] investigators that she had been living with the petitioner for one and one-half years. She further stated that the petitioner had told her that he had paid [REDACTED] to marry him so that he could obtain a green card. CIS subsequently contacted [REDACTED] and she withdrew her Form I-130 petition. On February 5, 2003, the petitioner filed a Form I-360 self-petition, 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.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that he has resided with his citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that he had resided with his spouse, is a person of good moral character, entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by his citizen spouse, the director asked him to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that he had resided with his spouse, that he married his spouse in good faith, and that he is a person of good moral character.

¹ The petitioner asserts that he was the victim of fraud and that he had no prior knowledge that a U.S. citizen named [REDACTED] filed a Form I-130 on his behalf in 1996. Ms. [REDACTED] Form I-130 was denied because the director determined that the petitioner had provided CIS with fraudulent documents.

² The BIA found, "[t]he record contains documents showing that the beneficiary had previously attempted to obtain a visa and adjust his status on the basis of falsified birth and marriage certificates, not on the basis of a marriage entered into for the purpose of evading immigration laws. . . [and] in the absence of an actual marriage, section 204(c) does not apply."

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here. The director determined that the petitioner had failed to establish that he had resided with his wife and that he had entered into the marriage in good faith.

On appeal, counsel for the petitioner "resubmits" previously provided documentation and submits a brief.

The director determined and the AAO concurs that the petitioner failed to establish that he had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married his wife in good faith. The evidence on the record is insufficient to establish that the petitioner married his citizen spouse in good faith. In a notice of intent to deny, the director outlined discrepancies regarding when the petitioner had resided with his spouse. Based on the discrepancies, it is not possible to determine when and where the petitioner and his spouse resided together, whether the petitioner was in fact living with someone else, and the bona fides of the marriage.

The record of proceeding contains the following conflicting evidence:

- In an affidavit dated April 21, 2001, the citizen spouse indicated that she lived at [REDACTED] Connecticut and that her marriage to the petitioner "is no longer valid."
- An investigative report dated April 26, 2001 states that the officers visited the residence listed on the Form I-130 petition of the petitioner and his citizen wife at [REDACTED] Connecticut where they encountered [REDACTED] who said that she was the petitioner's girlfriend and that the citizen spouse did not live there.
- [REDACTED] executed a sworn statement on April 26, 2001, indicating that the petitioner told her that "he paid [the citizen spouse] to marry him so he could get a green card" and that she had lived with the petitioner for approximately one and one-half years and that the petitioner had never lived with his citizen spouse.
- A case/incident report filed by the Norwalk, Connecticut Police Department dated September 27, 2001 indicates that the petitioner had separated from his citizen spouse and they were not living together.
- In a statement dated March 25, 2002, the petitioner claimed that he had resided with his citizen spouse since February 1997 and that they had lived together throughout that period except during 2000 when his citizen wife was incarcerated.
- In his March 25, 2002 statement, the petitioner indicated that his citizen wife left in January 2000 and they "got back together" in May 2001.
- In his March 25, 2002 statement, the petitioner wrote, "[o]n April 25, 2001, two officers went to my apartment [REDACTED] I was working, they identified themselves as police, Amanda was sleeping there that night."

- A case/incident report filed by the Norwalk, Connecticut Police Department dated April 12, 2002 indicates that the petitioner said that he had been separated from his citizen wife for one year because of her heroin use and that his citizen spouse had moved back ten months earlier (mid-2001).
- In an affidavit dated December 19, 2003, the petitioner stated that he and his citizen wife "went to live to [redacted] [in] June 2001, to live with a roommate [redacted] [redacted]."
- In his December 19, 2003 affidavit, the petitioner said that his citizen wife was arrested on January 11, 2000 "for possession of narcotics and she was sentenced to 3 years in jail, 1 year to serve and 3 of probation."

The record is unclear as to if and when the petitioner lived with his citizen spouse. [redacted] Every item of evidence listed above contradicts the petitioner's March 25, 2002 statement that he had lived with his citizen spouse from 1997 through March 2002 except for the year 2000. The petitioner failed to provide a reasonable explanation for the inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Based on this conflicting evidence, the petitioner has not established that he resided with his U.S. citizen spouse.

The petitioner provided CIS with a copy of his wife's extensive criminal history record. The petitioner's wife was arrested ten times in the years 1995 through 2000. She was arrested on charges including larceny, possession of narcotics, robbery, prostitution and criminal trespass. This criminal history casts doubt on the bona fides of the marriage. The petitioner submitted photographs taken of his wedding day and of one other occasion, but photographs are not persuasive evidence of a bona fide marriage.

The director also found that the petitioner had not established that he had entered into the marriage to the U.S. citizen spouse in good faith. The evidence on the record suggests that the petitioner wed [redacted] [redacted] in a marriage of convenience. In the petitioner's statement dated December 19, 2003, the petitioner said that he wanted to travel to his home country and his prospective bride wanted to "recuperate her two daughters."³ Accordingly, the petitioner has not established that he resided with the U.S. citizen spouse and entered into the marriage 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.

³ The evidence suggests that the petitioner's wife hoped to regain custody of her children and if she married she would appear to have a more stable home to offer them.