

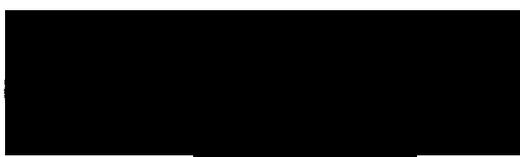
PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

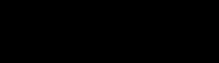


U.S. Citizenship
and Immigration
Services

B91



FILE:



Office: VERMONT SERVICE CENTER

Date: **NOV 18 2005**

EAC 02 115 52986

IN RE:

Petitioner:



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:

SELF-REPRESENTED

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

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director 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 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 the marriage to the citizen in good faith.

On appeal, the petitioner resubmits evidence and asserts that the director did not fairly examine the petitioner's relationship with his wife.

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 entered the United States without inspection on or about April 28, 1991. The petitioner was placed in deportation proceedings on May 7, 1991. An Immigration Judge ordered the petitioner deported on May 31, 1991. The petitioner appealed the Immigration Judge's decision on January 22, 1992 to the Board of Immigration Appeals (BIA).¹ According to the evidence on the record, the petitioner divorced his first wife [REDACTED] on November 6, 1995 and he wed U.S. citizen [REDACTED] on May 1, 1996 in Bronx. The petitioner filed a Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (I-212 application). The petitioner failed to respond to a request for additional evidence, so it was denied on May 14, 1997 for abandonment. The petitioner's spouse filed a Form I-130 petition the petitioner's behalf on December 27, 2002. The petitioner filed a Form I-485 concurrently with the I-130 petition. The district director denied the Form I-485. On February 15, 2002, 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)(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 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).

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 has resided with his spouse, is a person of good moral character, entered into the marriage in good faith and has 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. The director

¹ The BIA first dismissed the appeal and subsequently denied a motion to reopen on September 11, 2003.

further requested evidence that the petitioner qualified for a bona fide marriage exemption from section 204(g) of the Act. Section 204(g) of the Act, 8 U.S.C. § 1154(g) provides:

Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 245(e)(2), until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Here, the petitioner wed his citizen spouse while he was in deportation proceedings; hence, he is subject to section 204(g) of the Act.

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. The director denied the petition, finding that the petitioner had failed to establish that he had entered into the marriage in good faith.

The evidence in the record relating to good faith is as follows:

- The petitioner's wife's statement dated September 4, 2000.
- An affidavit from the petitioner's wife dated June 8, 2001 titled "affirmation of facts for reopening."
- An electricity bill in the wife's name alone dated May 2, 1997.
- A single bank statement for a joint account dated May 12, 1997.
- The petitioner's affidavit dated August 27, 2002.
- Verification from Citibank that the petitioner held an individual bank account as of August 15, 2002.
- Evidence on January 22, 2001, a landlord sought a money judgment for rent arrears from the petitioner's wife alone for the premises located at [REDACTED]
- Evidence that the petitioner and his wife filed one federal joint tax return in 1996.
- Evidence that the petitioner filed in single status in the years 1997 through 1999.
- Evidence that the petitioner filed as head of household in the years 2000 and 2001.

The petitioner provided scant evidence that he had entered into the marriage in good faith. He provided little detail about his courtship and marriage to his wife. He said they lived together for four years yet he provided very little evidence that he and his wife shared financial responsibilities. He provided no evidence that they owned property jointly save a single month's bank statement. No children were born of the marriage. The affidavit and statements from the petitioner's wife and her mother provide little detail about the marriage. The evidence is insufficient to establish that the petitioner 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.