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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

B9

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FILE:

EAC 05 123 53479

Office: VERMONT SERVICE CENTER

Date: AUG 09 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition on December 5 2005, finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse and that he entered into his marriage in good faith.

The petitioner filed a timely appeal on January 9, 2006.

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 [Secretary of Homeland Security] that—

- (aa) the marriage or the intent to marry the 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)(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 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.

The record reflects that petitioner married United States citizen [REDACTED] on March 24, 2002 in Los Angeles, California. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on April 23, 2002. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The Form I-485 was denied on February 6, 2003 based on abandonment. The Form I-130 petition was denied on May 13, 2004. The petitioner's Form I-485 was subsequently reopened but ultimately denied on March 21, 2005.

The petitioner filed the instant Form I-360 self-petition on March 24, 2005, 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 during their marriage.

With his initial submission, the petitioner submitted a copy of his driver's license, his spouse's birth certificate, and his marriage certificate. After conducting a preliminary review of this evidence, the director

found that the petitioner had failed to establish his prima facie eligibility.¹ Accordingly, on April 1, 2005, the director requested the petitioner to submit evidence that he resided with his spouse, that he was battered by or subjected to extreme cruelty by his spouse, that he is a person of good moral character, and that he entered into his marriage in good faith.

The petitioner responded to the director's request on May 26, 2005 by submitting a personal statement, copies of his Form I-20, visa and identification card, a police clearance from the California's Department of Justice, a bank statement, and a lease.

On September 9, 2005, the director requested further evidence to establish the petitioner's eligibility. Specifically, the director requested further evidence to establish the petitioner's claim of abuse and that he entered into the marriage in good faith. The petitioner responded to the director's request on November 8, 2005, by submitting a second personal statement.

On December 5, 2005, after reviewing the evidence contained in the record, the director denied the petition without the issuance of a notice of intent to deny in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii),² finding that the petitioner had failed to establish that he was battered by or subjected to extreme cruelty by his spouse and that he entered into his marriage in good faith.

On appeal, the petitioner submits a third personal statement and resubmits copies of the two statements previously submitted. As will be discussed, the petitioner's appellate submission does not overcome the director's grounds for denial.

The petitioner's claim that he has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse.

In his initial statement, the petitioner claimed that his spouse abused him "mentally, verbally, financially, and even threatened to do so physically through her multiple male cousin/friends." In his second statement, the petitioner also indicated that his spouse was possessive and would call him names. Additionally, the petitioner claimed that he "couldn't keep up with school," "lost track of his friends," and financially is "a mess."

The director denied the petition, in part, because the petitioner had failed to sign his personal statements and because the petitioner's statements regarding the alleged abuse were "non-specific."

¹ The determination of prima facie eligibility is made for the purposes of 8 U.S.C. § 1641, as amended by section 501 of Public Law 104-208. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition, is not considered evidence in support of the petition and is not construed to make a determination of the credibility or probative value of any evidence submitted along with that petition.

² The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

On appeal, the petitioner claims that he did not know he “had to be very specific when stating the extent of the abuses.” The petitioner further claims that because of being “raised in Africa with an influential French culture; it is extremely humiliating for one man to admit that he has been mentally/emotionally/psychologically/physically abused.” The petitioner then adds the following claims:

[My wife] pinched, pushed me and pulled my clothes during her persistent mood swings. At some points, she forced me to have unsafe sex with her against my will and pushed me to engage in some sexually perverse behavior even though I was reluctant to do so. She demanded sex constantly to the point that I could not take it anymore; as you may assume, she threatened to have me deported if I refused to be submissive. Some people find the above abuse physical; I did not consider them as physical abuses when I decided to file this petition.

* * *

. . . [S]he humiliated me and intimidated me any way she could . . . she was also extremely possessive and jealous; she was always trying to find out my whereabouts asking me the same questions persistently . . . she ignored and abandoned me for weeks without letting me know her whereabouts . . .

We do not find the petitioner’s explanation for the new claims made on appeal to be persuasive. Specifically, the fact that the petitioner did not consider the above claims to be physical abuse, does not explain his failure to describe such events in either of his previous statements. Moreover, even if the petitioner initially did not realize that he “had to be very specific,” the director’s request for evidence contained a detailed description of the claims, documentation, and evidence that should be submitted to establish a claim of abuse.

Regardless, even if we were persuaded by the petitioner’s explanation for failing to detail his abuses, we do not find his claims of abuse sufficient to establish that he was battered by or subjected to extreme cruelty by his spouse. The petitioner’s claims that he was called names, and that his spouse was possessive and jealous is not sufficient to establish a claim of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Further, the petitioner’s claims that he had to pay all of the joint expenses and that his spouse had bad credit is not sufficient to establish a claim of economic control. It is clear from the petitioner’s statements that he had access to money and control over how it was spent. The petitioner’s claims that he “lost track of his friends” and “stopped having fun” are not sufficient to establish that his spouse intentionally isolated him from his friends and family. The claims made by the petitioner do not sufficiently demonstrate that he was threatened, forcefully detained, psychologically or sexually abused or exploited or that his spouse’s actions were part of an overall pattern of violence. The escalating claims made by the petitioner in each of his successive statements causes us to question the veracity of his statements and whether his claims might be exaggerated. Without any documentary evidence related to his claim of abuse or affidavits from witnesses, we find the petitioner’s statements do not carry sufficient weight to establish that he was battered by or subjected to extreme cruelty by his spouse.

The petitioner's claim that he entered into the marriage in good faith.

As evidence to support his claim that he entered into his marriage in good faith, the petitioner submitted a single bank statement and a lease.

In his decision, the director noted the fact that although the lease was for the time period from September 19, 2003 until September 2004, the lease was signed on September 19, 2004. In his request for evidence, the director also noted that the lease was only signed by the petitioner. Regarding the bank statement, the director found that because the account was held "in trust for" the petitioner's spouse, it was not considered a joint account.

On appeal, the petitioner fails to provide any explanation for the discrepancies noted on the lease. Rather, the petitioner attempts to explain the lack of any joint documentation based on his claim that his spouse had bad credit. The petitioner's attempted justifications are not sufficient to overcome the director's findings.

While the petitioner's spouse's bad credit may not have allowed her to co-sign on the lease as claimed by the petitioner, the fact that the lease is dated *after* the period in which it supposedly covers, causes doubt as to the legitimacy of this document. While we do not necessarily agree with the director's finding that an account held "in trust for" is not evidence of joint assets,³ the fact that the petitioner has failed to submit any other documentary evidence such as tax returns, insurance, or car ownership or leases is notable especially given the petitioner's marriage of over three years. We further note that although the petitioner claims that he had given his spouse access to some of his financial accounts, the petitioner provides no evidence of a joint access and usage of any account. Finally, although the petitioner makes the claim that he entered his marriage in good faith, he provides no details about how he met his spouse, how long they dated, or his intent at the time of his marriage. The petitioner provides no further statement or evidence on appeal to establish his intent at the time of his marriage.

Accordingly, we concur with the findings of the director that the record is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by his spouse and that he entered into his marriage in good faith. These findings have not been overcome on appeal. Despite our support of the director's findings, however, the director's decision cannot stand because of the director's failure to issue a notice of intent to deny to the petitioner prior the issuance of the denial. Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a notice of intent to deny as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

Although the director's denial rested on the two issues discussed above, we find that the record is not sufficient to establish that the petitioner resided with his spouse. On the Form I-360, the petitioner claimed that he resided with his spouse from December 2001 until March 2005. However, the record contains no credible documentation to support this claim. The lease submitted by the petitioner is not signed by the petitioner's spouse and is signed after the period of time in which the apartment was supposedly rented. Although the petitioner also submitted a bank statement indicating a residence at the address claimed on the Form I-360, the statement is dated March 2005, the month in which the petitioner indicated he last resided

³ Although the petitioner's spouse does not have any actual control over the trust account as she would if the account were a joint bank account, the assets contained in that account are considered to be joint assets and would become available to her upon the occurrence of a specified event, such as the death of the petitioner.

with his spouse. We find the petitioner's statements regarding his joint address do not carry sufficient weight to establish that he resided with his spouse from December 2001 to March 2005. Accordingly, on remand, the petitioner should be afforded the opportunity to present additional evidence to establish his claims of a joint residence.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.