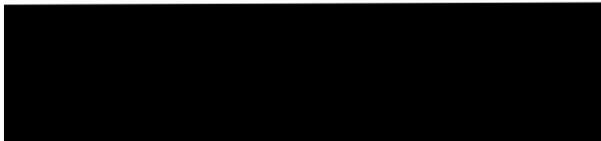


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DEC 13 2006

FILE:

EAC 06 046 52050

Office: VERMONT SERVICE CENTER

Date:

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.

A handwritten signature in black ink, appearing to be "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks immigrant classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner failed to establish that he resided with his spouse, 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 submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *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, including rape, molestation, incest (if the victim is a minor), or forced prostitution 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 . . ., must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(ix) *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.

* * *

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition -

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *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 abuse 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.

* * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

According to the evidence contained in the record, the petitioner married G-H¹, a United States citizen, in Los Angeles, California on April 30, 2001. The petitioner filed the instant Form I-360 self-petition on November 30, 2005.² On January 25, 2006, the director requested the petitioner to submit further evidence of his good moral character and that he entered into the marriage in good faith. The petitioner responded to the request on March 23, 2006. On May 16, 2006, the director issued a Notice of Intent to Deny (NOID) notifying the petitioner that the evidence submitted failed to establish, *inter alia*, that he resided with his spouse, entered into the marriage in good faith, and was battered by or subjected to extreme cruelty by his spouse. The petitioner responded to the NOID on July 24, 2006. The director denied the petition on August

¹ Name withheld to protect individual's identity.

² Although not at issue in this proceeding, the record also contains an approved Form I-130, Petition for Alien Relative, filed on the petitioner's behalf by his spouse.

25, 2006, finding that the petitioner failed to establish that he resided with his spouse, that he was battered by or subjected to extreme cruelty by his spouse, and that he entered into the marriage in good faith. The petitioner filed a timely appeal on September 25, 2006. On the Form I-290B, the petitioner indicated he needed 90 days to submit a brief and/or evidence to the AAO. To date, no further submission has been received on appeal. Accordingly, the record is considered to be complete as it now stands. On appeal, the petitioner asserts generally that the director erred in his determination but does not provide any specific references to any alleged error of fact or law on the part of the director. As will be discussed, these general assertions are not sufficient to overcome the director's stated grounds for denial.

Evidence that the petitioner has resided with his citizen spouse

On the Form I-360, the petitioner indicated that he resided with his spouse from April 1999 through December 2005 and that he last resided with her at [REDACTED] in Los Angeles. In his initial statement, the petitioner provided scant details regarding his residence with his spouse. He stated only that they met in 1994, worked together, and then started living together. The petitioner did not indicate for instance, where they lived, if they rented a home or if one moved into the home of the other, or if any one else resided with them. In his second statement, the petitioner offers no further details regarding their shared residence. In her statement, the petitioner spouse states the following:

In April 1999, I offered my home to [the petitioner] and his nephew who was living with him. He and his nephew moved in to my one-bedroom apartment temporarily . . . There was no need to add his name to my apartment lease because, I figured it was just a temporary relief to my best friend and his nephew. My landlady did not seem to mind my extra occupants at the beginning of their stay with me. As time went on, [the petitioner] sent his nephew away to live . . . since the apartment was too small for all of us and to prevent stirring up any concerns with my landlady.

While the record contains a single document in the petitioner's name at the claimed address, the record contains no documentary evidence such as a lease, utility bills, or financial documents issued to the petitioner at the claimed address. Although the petitioner's spouse indicated that the petitioner was not initially added to the lease because she believed his residence to be only "temporary," the record reflects the petitioner's claim to have resided at that address for nearly seven years. The petitioner also failed to submit testimonial evidence from his nephew who purportedly lived at the residence with the petitioner and his spouse, or from the landlord of the apartment building, where the petitioner continues to reside to this day. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i)*. While the petitioner does submit a statement from his cousin, [REDACTED], [REDACTED]'s statement generally indicates that the petitioner resided with his spouse. She does not indicate their address, the specific dates of their residence, or that she ever visited the petitioner and their spouse at their residence. The most detailed statement regarding the petitioner's residence with his spouse was provided by [REDACTED] a neighbor of the petitioner. However, given the lack of any other testimonial or documentary evidence of the petitioner's claimed residence with his spouse of over six years, this single statement does not carry sufficient weight to establish that the petitioner resided with his spouse. Consequently, the petitioner has failed to establish that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

To support his claim of abuse, with the initial filing, the petitioner submitted a personal statement, an arrest report related to his spouse, a police report, his personal statement, and two letters from his spouse's landlord, [REDACTED] and photographs.

In his statement, the petitioner claimed generally that his spouse began to drink heavily, that she would become violent and throw things, grab him, scratch him, bite him, destroy glasses, break doors, disturb other tenants, and that he was subjected to "constant verbal and physical abuse." The petitioner describes one incident where his spouse bit him. However, given the petitioner's description of this incident, it is unclear whether his spouse was intentionally trying to hurt him. While the petitioner claimed that his wife only "pretended" to kiss him and then subsequently bit him instead, he also indicates that she was "heavily drunk." We cannot conclude that this purported injury was caused by his spouse's specific intent to harm him rather than being a result of her clumsy, drunken state. Although the petitioner submits a photograph of his lip, we observe no visible injury to the petitioner. Moreover, as the statement does not reference a specific date for this incident and the photograph contains no date, we are unable to verify that the photograph documents the purported injury. Similarly, the petitioner's claim of being injured by a knife while attempting to rescue his spouse from a "suicidal rage" is not evidence of any abuse against the petitioner. Although the petitioner also submitted three photographs documenting the "cut" he received in this incident, we are unable to discern any injury in any of the photographs. Regardless, from the petitioner's own description, it appears that the petitioner was injured while assisting his spouse, not because of any intentional infliction of abuse by his spouse.

Although the petitioner claims that he alerted the police of his spouse's destruction of property, the record contains no documentation of a police report on the petitioner's behalf. Rather, the record contains a police report which indicates that the petitioner's spouse was the "victim" of a verbal dispute. Moreover, it is unclear from the photographs whether the disarray was the result of his spouse's destruction or whether, as noted in the letter from [REDACTED] dated February 16, 2005, the photographs simply document their "near pack-rat living conditions." Although the petitioner also submitted a second letter from [REDACTED] dated September 9, 2004, as evidence of his wife's "behavior," the letter does not describe any behavior that relates to the petitioner. Despite the petitioner's claim that his spouse's behavior disrupted other residents, neither [REDACTED] nor the petitioner's neighbor, [REDACTED] makes any claims regarding the petitioner's being subjected to abuse by his spouse.

The arrest report indicates that the petitioner's spouse was arrested on January 21, 2005 and charged with "Drunk Driving Alcohol/Drugs." Although the petitioner claims that his spouse was convicted and placed on probation, he submits no court documents to support these claims. More importantly, the petitioner fails to explain how this incident relates to his claim of battery or extreme cruelty. He does not describe the events that took place on the day his spouse was arrested, whether he was present when she was purportedly intoxicated, or any other details that would establish that this incident relates to his claim of batter or extreme cruelty.

In response to the director's NOID, the petitioner made an additional claim that he was threatened by his spouse's boyfriend and called the police. The petitioner claims that the officer told the petitioner that "if he pressed charges, they would come and arrest [his spouse] and the boyfriend" but that the petitioner did not want her to go to jail. The petitioner submitted no documentation to establish either his call to the police or the fact that an officer responded to the scene. Regardless, the fact that the petitioner was threatened by someone other than his spouse is not sufficient to establish that he was abused by his spouse.

The statement submitted by the petitioner's spouse in response to the NOID indicates they "had moments just like everyone else," that they "fought many times, as a result of diverse stress, be it financial or otherwise," she does not affirm that she ever threatened or battered the petitioner or that she subjected to extreme cruelty. While the petitioner's cousin indicates that she witnessed the petitioner's spouse being "drunk and incoherent" she does not describe being a witness to or having any knowledge of any incident of abuse or extreme cruelty. Accordingly, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The petitioner's first and second statements contain nearly identical information pertaining to his claim of a good faith marriage. He states:

We were married on April 30, 2001 in good faith and have resided together since then. We have known each other since 1994. We worked together for a while. In 1999 we started living together. We continued to live together and on April 30, 2001, we were married. The relationship was happy and eventful in the beginning. [G-] demonstrated a lot of love and affection then. I also showed her support and affection.

The petitioner does not further discuss how he met his spouse, their courtship, wedding or any of their shared experiences, apart from the claimed abuse. The statements provided by the petitioner's cousin and neighbor are of minimal probative value as they make general claims regarding the petitioner's good faith marriage. The statements offer no specific details about the petitioner's relationship with his spouse prior to their marriage or any other information which establish that he entered into his marriage in good faith. Although we acknowledge the submission of a statement from the petitioner's spouse indicating that the petitioner "demonstrated a lot of love and affection for me," we do not find this single statement to be sufficient to establish the petitioner's good faith intent in marrying his spouse.

Despite a claimed relationship of nearly seven years, the petitioner has not submitted any documentary evidence showing shared financial accounts. In his statement, the petitioner explains that there are no "bank account receipts because [G-] was a spendthrift and had begun to drink heavily." However, contrary to this claim, the petitioner's spouse indicates that the petitioner "fully trusted [her] with his bookstore business and money," and that there are "no joint bank account receipts because we decided it was best we maintain our separate accounts since [the petitioner] kept only one account which is his long-existing prior business account."

The record also lacks any documentary evidence of other commingled assets and liabilities such as medical, life, or car insurance, joint ownership of property or other assets. Although the petitioner has not submitted any evidence of the filing of his taxes during his marriage, we note that the record contains a copy of the petitioner's spouse's 2001 Wage and Tax Statement and her 2001 and 2002 tax returns which indicate her filing status as single. Again, although not required to do so, the petitioner offers no explanation for why his spouse claimed to be single or for the lack of evidence regarding his own filing status from 1999 to 2005.

The remaining evidence consists of three, undated, photographs of the petitioner with his spouse. While the photographs demonstrate that the petitioner and his spouse were together on these occasions, they do not document his good faith marriage and relationship of nearly seven years. Accordingly, the petitioner has

failed to establish that he entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.