

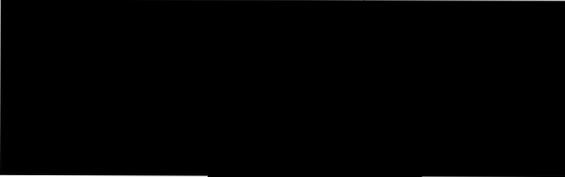


U.S. Citizenship
and Immigration
Services

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FILE:

EAC 05 196 52120

Office: VERMONT SERVICE CENTER

Date: JUL 13 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:



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 Acting Director, Vermont Service Center, denied the immigrant visa petition. The petitioner appealed the director's decision and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of the Dominican Republic who entered the United States on August 30, 1993 as a F-1 nonimmigrant student and now seeks 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 an alien subjected to battery or extreme cruelty by his United States citizen spouse. The petitioner filed his Form I-360 on June 30, 2005. The petitioner is scheduled for an immigration court hearing in Boston on July 25, 2006.

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

The petitioner submitted 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 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 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.

* * *

(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.

The record shows that the petitioner married United States citizen [REDACTED] on February 24, 2001. Ms. [REDACTED] filed a Form I-130 on the petitioner's behalf on April 30, 2001. On December 10, 2002, the district director denied the petition, finding that the parties had failed to establish that they entered into the marriage in good faith. The petitioner's marriage to Ms. [REDACTED] was terminated by divorce in the Dominican Republic on December 31, 2002. According to the petitioner, he met his second prospective wife, [REDACTED], in the fall of 2002. The petitioner was placed in removal proceedings on January 16, 2003. One week later, he was [REDACTED] a United States citizen, on January 23, 2003.

The first issue to be addressed in this proceeding is whether the petitioner established that he entered into the marriage in good faith. The petitioner provided Citizenship and Immigration Services (CIS) with the following evidence relating to his good faith marriage:

- The petitioner's statement.
- A letter written by the petitioner and his wife, Ms. [REDACTED]
- Copies of photographs taken of the petitioner and his wife.
- Letters written by friends of the petitioner.
- A lease dated June 1, 2003, for the premises located at [REDACTED] Providence, Rhode Island.
- Four bank statements.
- Bills.

In his statement, the petitioner provided little detail about his courtship with Ms. [REDACTED]. He states that they met in the fall of 2002, they dated a few weeks, they lived together for four months then wed in January 2003. The petitioner failed to provide a statement regarding his intent at the outset of his marriage to Ms. [REDACTED].

In a letter dated October 1, 2003, the petitioner and Ms. [REDACTED] formally declared that they "married for love."

The petitioner submitted photographs of himself and Ms. [REDACTED]. While the photographs are evidence that the petitioner and his spouse were together at a particular place and time, they do not establish the petitioner's intent at the time of his marriage or that he resided with his spouse.

The petitioner submitted undated letters from his friends [REDACTED] and [REDACTED] Ms. [REDACTED] wrote that she knows that the petitioner and Ms. [REDACTED] "have been having a romantic relationship for some time." Mr. [REDACTED] stated that he knows that the petitioner has been dating Ms. [REDACTED] for a while and have been in their company many times." These letters have little probative value because they are undated and lack details regarding the petitioner's emotions or intent.

The petitioner provided Citizenship and Immigration Services (CIS) with many utility bills; however there are anomalies in the bills. The petitioner submitted a lease indicating that he and his wife resided at [REDACTED] beginning June 2, 2003; yet, he submitted an electric bill dated September 5, 2003 for services provided to [REDACTED] it is noted that the petitioner's prior wife [REDACTED] listed [REDACTED] Providence, Rhode Island as her address on their divorce papers. If the petitioner resided at [REDACTED] it is unclear why he and his current wife were billed for services rendered to [REDACTED]. The petitioner submitted gas bills addressed to the petitioner and his current wife at [REDACTED] Providence, dated August 27, 2003 and September 5, 2003; yet they were allegedly living together at [REDACTED]. On his Form I-360, the petitioner indicated that he resided with his current wife from January 2003 to February 2005. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner submitted four joint bank statements dated February 2003, March 2003, July 2003 and August 2003. He also submitted copies of checks signed primarily by the petitioner. Only two checks were signed by his current wife [REDACTED].

Pursuant to the regulation at 8 C.F.R. § 204.2(2)(i), the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. As discussed above, we find the evidence contained in the record does not carry sufficient weight to establish that the petitioner entered into the marriage in good faith. Accordingly, the petition may not be approved. However, because the director failed to issue a Notice of Intent to Deny (NOID) in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) which requires the director to issue a NOID in all cases where "the preliminary decision on a properly filed self-petition is adverse to the self-petitioner," the case must be remanded to the director for further consideration.

On remand, the director should also consider whether the petitioner is subject to section 204(g) of the Act, which states:

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

Section 245(e) of the Act states:

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide

The record contains no evidence that the petitioner left the United States after marrying Ms. [REDACTED]. Accordingly, he must establish by clear and convincing evidence that the marriage is bona fide.

Although the evidence on the record is insufficient to establish that the petitioner married his citizen spouse in good faith, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which 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.

The case must be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of his case.

On remand, the director should explore whether the petitioner established that his wife subjected him to battery or extreme mental cruelty as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(E). The evidence relating to abuse consists of the petitioner's statement, three letters from a therapist, and three police reports. The February 26, 2005 police report indicates that the petitioner reported that his car was vandalized. There is no indication in the report or in the record of proceedings that he suspected his wife of vandalizing his car. The February 4, 2005 police report indicates that the petitioner phoned the police to report that some unknown person had been calling his cell phone and threatening his life. Again the petitioner did not allege that his wife made the calls. In a February 5, 2005 police report, the petitioner told the police that his wife had been at home earlier in the day and had made threats.

The record also shows that the petitioner obtained an ex parte temporary restraining order on February 4, 2005. In a largely illegible handwritten statement in support of his petition, the petitioner said that his wife threatened to have one of her cousins hurt him.

The petitioner submitted three letters from a therapist, [REDACTED] Psy.D., [REDACTED]. In his first letter dated March 2, 2005, Mr. [REDACTED] states that the petitioner's marriage "has been traumatic" but that he did not meet the diagnosis of post-traumatic syndrome [REDACTED]. In a second letter dated June 23, 2005, Mr. [REDACTED] states that the petitioner spoke to him of many instances of emotional and physical abuse he endured. In a letter dated June 27, 2005, Mr. [REDACTED] states that the petitioner meets the criteria for PTSD and that the petitioner told him that his wife had on occasion threatened him with a knife and had physically abused him. The petitioner and his therapist allude to many instances of physical and emotional abuse from the petitioner's wife, yet provide almost no details about these incidents.

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 that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.