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U.S. Citizenship
and Immigration
Services

B9

FILE:

[REDACTED]
EAC 04 243 53317

Office: VERMONT SERVICE CENTER

Date: MAR 10 2006

IN RE:

Petitioner: [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:

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 read "R. Wismann".

Robert P. Wismann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Kenya who 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 director denied the petition because the record did not establish that the petitioner entered into his marriage with his U.S. citizen wife in good faith or that the petitioner's wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a written statement, a letter written by his mother-in-law and four photographs. The petitioner also requests oral argument so that he "can employ language that is not fit to write to say bluntly that which I have been through." Citizenship and Immigration Services (CIS) has sole authority to grant or deny requests for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this case, the petitioner identifies no unique factors or issues of law to be resolved on appeal, but simply states that he would be better able to explain his case orally. However, the written record of proceeding sufficiently represents the facts and legal issues in this case. Consequently, the request for oral argument is denied.

For the reasons discussed below, we concur with the director's determination that the petitioner did not establish that he was battered or subjected to extreme cruelty by his U.S. citizen wife during their marriage or that he entered into their marriage in good faith. The petitioner's claims and the evidence submitted on appeal do not overcome these grounds for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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) further explicates the statutory requirements and states, in pertinent part:

(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.

* * *

(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 evidence will be considered.

Battery or Extreme Cruelty

The record in this case shows that the petitioner married Alvina Samantha Cassidy, a U.S. citizen, on November 22, 2001 in Maryland. In his letter dated August 18, 2004 and submitted with his Form I-360, the petitioner stated that his wife began taking drugs and drinking excessively after their marriage. He reports that his wife became violent, bit and abused him many times and that the police frequently came to their house, however the petitioner did not provide any details regarding his wife's alleged abuse and submitted no copies of police reports or other records. Accordingly, on March 7, 2005, the director issued a notice requesting the petitioner to submit evidence that his wife had battered or subjected him to extreme cruelty. Pages two and three of the

director's notice listed the specific types of documents the petitioner should submit and explained the specific elements and effects of abuse that should be covered in testimony submitted to establish extreme cruelty. In response, the petitioner submitted documents relating to his posting of bond for his wife and the subsequent forfeiture of the bond for his wife's failure to appear at court, an attorney-client agreement signed by the petitioner, letters from two of the petitioner's friends and the petitioner's own second written statement, notarized on March 25, 2005.

The director correctly determined that these materials did not establish the requisite battery or extreme cruelty. The bond-related documents pertain to the petitioner's wife's criminal charges for driving an uninsured vehicle and driving with a suspended license. The record does not establish that this incident involved his wife's subjection of the petitioner to battery or extreme cruelty. The attorney-client agreement is signed by the petitioner, signed by the attorney on January 24, 2003, and contains handwritten notations of the petitioner's wife's last name and the date February 20, 2003. Although it appears to be related to the case for which the petitioner posted bond for his wife, the agreement also does not provide any evidence that the petitioner was battered or subjected to extreme cruelty by his wife in connection with the underlying criminal case.

In his March 25, 2005 statement, the petitioner explains that his wife often called him names, hit and slapped him and asked him to leave their house late at night. The petitioner states that his wife would call the police, but that he was never arrested and never pressed charges against his wife. The petitioner explains that he was unable to obtain police reports of these incidents because he could not recall the dates and times of their altercations. The petitioner states that he has seen his wife push her parents and assault her brother and that he has "suffered worse." The petitioner does not describe in detail any specific instances of his wife's alleged abuse.

_____ a friend of the petitioner, states that the petitioner worked at a restaurant that Mr. _____ managed in 2001 and that the petitioner's wife would follow the petitioner around as he worked. Mr. _____ explains that eventually he had to let the petitioner go because the petitioner's wife would push him around in the kitchen when they were arguing. _____ another friend of the petitioner, states that during the winter of 2001, the petitioner called him at night and asked him to pick him up. Mr. _____ reports that the petitioner had a black eye when he picked him up that night and that he later picked him up under similar circumstances on many more occasions. The last time that Mr. _____ picked up the petitioner, he states that the petitioner's wife followed them, that they had a discussion in Mr. _____ home, but that the petitioner's wife began cursing and shoving the petitioner and Mr. _____ told them to leave. The statements of Mr. _____ and Mr. _____ are not corroborated by any other evidence in the record and the petitioner himself does not describe the particular incidents discussed by his friends.

On appeal, the petitioner states that whenever the police were called by his wife they took no information and always just asked the petitioner to leave. The petitioner explains that he would stay with friends until things "cooled down" and that his wife would always soon find him, take him home and promise that things would be fine. The petitioner states that his wife kept his documents and pictures, but does not state that there are any particular documents or pictures in his wife's possession that would document his wife's battery or extreme cruelty. The petitioner does not discuss any attempts to obtain such documents from his wife or other sources. On appeal, the petitioner again fails to describe in detail any particular incidents of his wife's alleged abuse.

The petitioner submitted no documents of his wife's alleged battery or extreme cruelty of the types described in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The record does not indicate that the petitioner himself ever called

the police, sought an order of protection or took other legal steps to end his wife's alleged abuse. The petitioner submitted no evidence that he ever sought medical treatment for injuries inflicted by his wife. The record is also devoid of any evidence that the petitioner sought help from clergy, social workers or other social service agency personnel. The submitted bond documents confirm the petitioner's statement that his wife engaged in destructive behavior, but the materials do not establish that his wife's actions included abusing the petitioner. Accordingly, the petitioner has not established that his wife battered or subjected him to extreme cruelty, as required by section 204(a)(1)(A)(iii) of the Act.

Entry into the Marriage in Good Faith

In his letter dated August 18, 2004, the petitioner states that he met his wife in 1999, they stayed together for two years and then decided to get married on December 30, 2002. The submitted marriage certificate indicates that the petitioner was in fact married on November 22, 2001. The petitioner does not explain this discrepancy in any of his subsequent statements submitted below or on appeal. With his Form I-360, the petitioner submitted a copy of a residential lease signed by himself and his wife as joint leasees on August 27, 2003; a letter offering the petitioner an additional insurance benefit rider that lists the petitioner and his wife as the insured parties on a sample billing statement; an electricity bill addressed to the petitioner and his wife and listing a payment due date of August 3, 2004; and a letter from an electric company addressed to the petitioner and his wife, which is dated April 2, 2004. However, on his Form I-360, the petitioner states that he lived with his wife from August 2000 to March 2004. Accordingly, the bill and letter from the electricity company arose after the couple's separation and do not demonstrate a good faith marriage. The insurance letter is offering the petitioner an additional benefit, but does not indicate that the petitioner accepted the offer and the petitioner submitted no documentation of any insurance policies in which he and his wife are listed as each other's beneficiaries. The lease shows that the petitioner resided with his wife, but does not establish that the petitioner entered into their marriage in good faith.

On March 7, 2005, the director issued a notice requesting the petitioner to submit further evidence that he married his wife in good faith. The director listed the specific types of documents the petitioner could submit to establish his eligibility under this statutory requirement pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(vii). In response, the petitioner submitted documents related to his postage of bond for his wife, his second written statement notarized on March 25, 2005 and the letters of his friends, Mr. [REDACTED] and Mr. [REDACTED]. In his second statement, the petitioner does not discuss his entry into marriage with his wife. Mr. [REDACTED] states that he met the petitioner's wife, but only discusses the problems she caused for him and the petitioner when she visited the petitioner at work. Mr. [REDACTED] states that the petitioner became withdrawn and worked very long hours after he met his wife, but does not provide any other details regarding the couple's courtship, wedding, or marital relationship, apart from the alleged abuse.

On appeal, the petitioner states that his wife kept all his documents and pictures and he cannot get them. He states that "[s]he is very particular about that sort of thing," but does not describe any of his attempts to reclaim his possessions from his wife or to obtain documentation of his good faith entry into their marriage from other sources. On appeal, the petitioner submits a letter from his wife's mother, [REDACTED] who states, "I don't believe he married [my daughter] for to become [sic] a citizen." Ms. [REDACTED] provides no details regarding the couple's courtship, wedding, or marital relationship.

On appeal, the petitioner submits three photographs of his wife and himself on their wedding day. On the back of the first photograph, the petitioner states that he met his wife at the restaurant where he worked and

that she visited him there often. On the second photograph, the petitioner explains that the couple is pictured with Pastor [REDACTED] who solemnized their marriage and was “instrumental in patching out” the petitioner’s marriage. Yet the petitioner submits no written statement from Pastor [REDACTED] to support his claimed entry into his marriage in good faith. The third photograph, like the other two, is dated November 22, 2001, the date the petitioner was married as indicated on the submitted copy of his marriage certificate. However, the petitioner states (on the back of the third photograph) that the picture was taken on his wedding day, but that the date was not adjusted on the camera. He states that the wedding, “was a simple affair in [my wife’s] auntie’s home I think on Thanksgiving day.” Again, the petitioner appears mistaken as to the actual date of his marriage and provides no explanation for the discrepancy between the date on his marriage certificate and his erroneous recollection of that date.

The petitioner has submitted almost no evidence of his entry into his marriage in good faith in the form of documents listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). The record contains no copies of the couple’s joint bank accounts, shared insurance policies, jointly filed tax returns or other evidence that they commingled their assets or otherwise shared significant responsibilities. In their statements submitted on appeal, neither the petitioner nor his wife’s mother provide any detailed description of the couple’s courtship, decision to marry, wedding, honeymoon (if any), shared experiences or marital relationship apart from the alleged abuse. Moreover, the petitioner has twice indicated (in his letter dated August 18, 2004 and again on appeal) that he does not know the correct date of his marriage. Consequently, the record does not demonstrate that the petitioner entered into his marriage with his U.S. citizen wife in good faith, as required by section 204(a)(1)(A)(iii).

The current record does not establish that the petitioner was battered or subjected to extreme cruelty by his United States citizen spouse during their marriage or that he entered into their marriage in good faith. He is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

However, 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 director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his case.

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.