

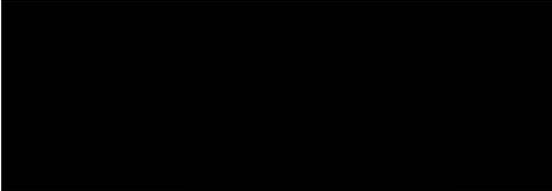


U.S. Citizenship
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FILE: [REDACTED]
EAC 02 172 52422

Office: VERMONT SERVICE CENTER

Date: MAR 24 2006

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Yemen who seeks classification as a special immigrant pursuant to section 204(204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien whose child was subjected to battery or extreme cruelty by his United States lawful permanent resident spouse. The petitioner filed his Form I-360 on April 22, 2002. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a notice on October 11, 2002 requesting the petitioner to submit evidence of the legal termination of all of his and his spouse's prior marriages. On November 20, 2002, the petitioner submitted additional evidence. On November 22, 2004, the director denied the petition because the additional evidence failed to establish that the petitioner had a qualifying relationship with a U.S. lawful permanent resident and was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on such a relationship. On appeal, counsel submits two briefs and additional documents. For the reasons discussed below, we concur with the director's determination and find that counsel's claims and the evidence submitted on appeal do not overcome the reasons 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)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or the alien's child was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, an alien who has divorced a U.S. lawful permanent resident may still self-petition for immigrant classification under section 204(a)(1)(B)(ii) of the Act if the alien demonstrates that he or she is a person

who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

* * *

(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse.

The corresponding regulation at 8 C.F.R. § 204.2(c) states, in pertinent part, that to be eligible for classification under 204(a)(1)(B)(ii) of the Act, an alien must have a qualifying relationship with a U.S.

lawful permanent resident and must be “eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship.”

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner If the self-petition is based on a claim that the self-petitioner’s child was battered or subjected to extreme cruelty committed by the citizen or lawful permanent resident spouse, the self-petition should also be accompanied by the child’s birth certificate or other evidence showing the relationship between the self-petitioner and the abused child.

In this case, the record shows that the petitioner entered the United States on August 22, 1992 and was admitted as a B-2 visitor for pleasure with permission to stay in the United States until February 21, 1993. The petitioner filed a Form I-589 request for asylum on November 25, 1992. On September 12, 1996, the former Immigration and Naturalization Service referred the petitioner’s asylum case to an immigration judge and on March 6, 1997, the former Service served the petitioner with an Order to Show Cause and Notice of Hearing in deportation proceedings. On June 1, 1997, the petitioner married [REDACTED] a lawful permanent resident of the United States, in Detroit, Michigan while he was in deportation proceedings. The petitioner filed his Form I-360 self-petition on April 22, 2002. On September 8, 2003, an immigration judge granted the petitioner voluntary departure in lieu of deportation and on September 11, 2003, Citizenship and Immigration Services (CIS) granted the petitioner’s request for an extension of time in which to depart from the United States. The Form I-210 does not state a date before which the petitioner was to have left the United States, but the document requires the petitioner to notify CIS on or before March 1, 2005 of his detailed arrangements to leave the United States. The petitioner filed a motion to reopen his deportation proceedings, which was denied by the immigration judge on February 15, 2005.

The record shows that the petitioner divorced Ms. [REDACTED] on February 26, 2002, two months prior to the filing of this petition. The petitioner submitted medical records and a child abuse investigation report dated September 2001, which indicate that Ms. [REDACTED] subjected their then three year-old son to battery or extreme cruelty during their marriage. The petitioner’s divorce decree also states that the

petitioner was awarded sole custody of the couple's children and that the court deviated from the applicable parenting time guidelines regarding Ms. [REDACTED]'s visitation rights due to her "neglecting the children by beating, screaming and searing them with heated knives as a form of discipline." This evidence demonstrates that the petitioner's subsequent divorce was connected to Ms. [REDACTED] abuse of their son, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

Qualifying Relationship with a U.S. Lawful Permanent Resident

The petitioner initially submitted a copy of his marriage license and certificate, which showed that his marriage to Ms. [REDACTED] was conducted by [REDACTED] but did not indicate that the marriage had been registered with the appropriate civil authorities in Michigan. As noted by the director, the submitted copy was insufficient to establish the validity of the petitioner's marriage to Ms. [REDACTED]. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. 8 C.F.R. § 204.2(c)(2)(ii). On appeal, the petitioner submits a certified copy of his marriage certificate which shows that the petitioner's marriage to Ms. [REDACTED] was registered with the Wayne County, Michigan Circuit Court on June 9, 1997.

Their marriage certificate states that both the petitioner and Ms. [REDACTED] had one previous marriage to other individuals. However, the petitioner stated on his Form I-360 that he had been married three times. In fact, the record shows that the petitioner has been married and divorced four times. In an affidavit submitted on appeal, the petitioner states that the license for his marriage to Ms. [REDACTED] was completed by a clerk and that due to the petitioner's unfamiliarity with the English language at the time, he did not notice that the clerk made a mistake in reporting the number of times he had previously been married. Yet the petitioner does not state, for example, that Ms. [REDACTED] had similarly limited English language capabilities or also did not notice the purported mistake for other reasons.

The petitioner submitted no evidence in response to the director's request for evidence of the legal termination of his and Ms. [REDACTED] previous marriages. Instead, the petitioner submitted a copy of the decree dissolving the marriage between the petitioner and Ms. [REDACTED] entered by the La Grange County, Indiana Circuit Court on February 26, 2002. Nonetheless, the petitioner's CIS records contain an English translation of a "Divorce Document" issued by the Republic of Yemen Ministry of Justice First Instance Court of South Western Sana'a on May 5, 1997, which confirms the petitioner's divorce from his prior wife, [REDACTED]. The translation of this divorce document is not certified in compliance with the regulation at 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit a certified translation of the document, we cannot determine whether the evidence supports the petitioner's claim. *Id.* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On appeal, the petitioner submits copies of English translations of two additional "Divorce Document[s]" issued by the Republic of Yemen Ministry of Justice, Dhamar Eastern Court, which confirm the petitioner's two prior divorces in 1980 and 1987. These documents are undated, were

submitted without the required certification and without copies of the original documents from the Dhamar Eastern Court. Again, without certified translations of these documents, we cannot determine whether the evidence supports the petitioner's claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The present record thus does not properly document the legal termination of the petitioner's three prior marriages, does not establish the validity of the petitioner's marriage to Ms. [REDACTED] and fails to establish that the petitioner was a bona fide spouse of a U.S. lawful permanent resident pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act.

The Possible Bigamy of the Petitioner's Spouse

Pursuant to section 204(a)(1)(B)(ii)(II)(aa)(BB) of the Act, an alien whose spouse was not legally free to marry him or her is still eligible for classification under section 204(a)(1)(B)(ii) if the alien:

believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of the marriage, but whose marriage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States[.]

In her decision, the director referenced the English translation of a document in the petitioner's CIS records, which is entitled "Status Confirmation" and was issued by the Republic of Yemen Ministry of Justice South Western Sana'a First Instance Court on July 1, 1997. This document purportedly confirms Ms. [REDACTED] customary divorce from her prior spouse. The English translation of this document is not certified. Again, without certified translations of these documents, we cannot determine whether the evidence supports the petitioner's claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The director nonetheless discussed this document in her decision and concluded that Ms. [REDACTED] was not legally free to marry the petitioner because the effective date of her divorce occurred after she and the petitioner were married. On appeal, counsel claims that the date of Ms. [REDACTED] customary divorce is the controlling date and that Ms. [REDACTED] was legally free to marry the petitioner on June 1, 1997. We do not reach the issue of what date is considered the date of divorce for immigration purposes when a petitioner presents evidence of a customary divorce that is later recognized by a civil court. Regardless of Ms. [REDACTED]'s possible bigamy, the petitioner has submitted on appeal a certified copy of his marriage certificate to Ms. [REDACTED] that was timely registered with the Wayne County Michigan Circuit Court. This certificate indicates that the petitioner believed he had married Ms. [REDACTED] and that a marriage ceremony was actually performed, as required by section 204(a)(1)(B)(ii)(II)(aa)(BB) of the Act. *See also* Memo. Of Johnny N. Williams, Exec. Assoc. Commissioner, Office of Field Operations, *Eligibility to Self-Petition as an Intended Spouse of an Abusive U.S. Citizen or Lawful Permanent Resident*, p.2 (Aug. 21, 2002) (The proof submitted "must

demonstrate that the self-petitioner believed that s/he entered into a legally valid marriage with the USC or LPR. . . . Primary evidence shall be a marriage certificate issued by civil authorities in the United States or abroad.”).

The marriage certificate alone, however, does not establish that the petitioner had a qualifying relationship with Ms. [REDACTED] because the present record does not establish the legal termination of the petitioner’s own three prior marriages. On appeal, the petitioner has submitted copies of uncertified English translations of court documents from Yemen that purportedly attest to his three divorces prior to his marriage to Ms. [REDACTED] on June 1, 1997. These submitted translations were not certified and were submitted without copies of the original documents from the Yemeni courts. Accordingly, we cannot determine whether the evidence document’s the petitioner’s eligibility. See 8 C.F.R. §§ 103.2(b)(3), 103.2(b)(4).

On appeal, counsel contends that because the petitioner’s marriage to Ms. [REDACTED] was his most recent marriage prior to his marriage to Ms. [REDACTED] “it is only logical that all his prior marriages were properly terminated according to the laws and customs of Yemen. Were they not properly terminated, he would not have been permitted by Yemen law to marry [Ms. [REDACTED].” The record contains no evidence of the marriage and divorce laws and customs of Yemen to support counsel’s claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, as noted above, the petitioner did not submit a certified translation of the document concerning the petitioner’s purported divorce from Ms. [REDACTED] as required by the regulation at 8 C.F.R. § 103.2(b)(3). Consequently, the evidence is not probative.

The present record does not establish that the petitioner had a qualifying relationship with a U.S. lawful permanent resident and was eligible for preference immigrant classification under section 201(b)(2)(A)(i) of the Act based on that relationship, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(i)(B).

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.

Accordingly, 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 also consider the applicability of section 204(g) of the Act to the petitioner's case. Section 204(g) of the Act 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 regarding the alien's right to remain in the United States are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record shows that the petitioner married Ms. [REDACTED] when he was in deportation proceedings. The petitioner submitted no evidence that he left the United States in compliance with the order of the Immigration Judge on September 8, 2003 and pursuant to the CIS Form I-210 dated September 11, 2003. Accordingly, based on the current record, the petitioner appears to be subject to section 204(g) of the Act and must establish his good faith entry into marriage with Ms. [REDACTED] through clear and convincing evidence pursuant to section 245(e) of the Act.

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 corresponding 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

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 this decision.