

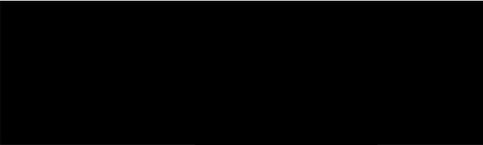


U.S. Citizenship
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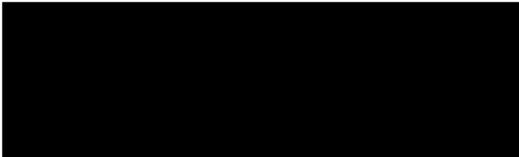
Office: VERMONT SERVICE CENTER

Date: AUG 16 2007

IN RE: Petitioner: [Redacted]

PETITION: Petition for 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks classification as an 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, finding that the record contained “insufficient credible evidence” 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.

On appeal, counsel submits a brief with an additional statement from the petitioner.

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:

(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 . . . spouse, 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 relevant evidence will be considered.

The petitioner in this case is a native and citizen of the United Kingdom. The petitioner married M-K-B-¹ a United States citizen, on February 14, 2005 in California. The petitioner filed this Form I-360² on December 12, 2005.³ On February 21, 2006, the director requested the petitioner to submit additional evidence of *inter alia* the alleged battery or extreme cruelty and evidence that he entered into his marriage in good faith. The petitioner, through counsel, responded to the director's request on April 7, 2006 and requested an additional 60 days in which to respond. On May 10, 2006, the director issued a Notice of Intent to Deny (NOID) the petition informing the petitioner of the insufficiency of the evidence contained in the record. The petitioner responded to the NOID on July 7, 2006 and submitted additional evidence. After reviewing the evidence contained in the record, including the evidence submitted in response to the NOID, the director denied the petition on August 16,

¹ Name withheld to protect individual's identity.

² Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, filed in the petitioner's behalf by M-K-B-. The Form I-130 was terminated by the Service for abandonment and the Form I-485, Application to Adjust Status, concurrently filed with the Form I-130 was denied on November 18, 2005.

³ The director mistakenly refers to the date of filing as December 2, 2005.

2006, finding that the petitioner failed to establish that he had been battered by or subjected to extreme cruelty by his spouse and that he entered into his marriage in good faith.

The petitioner, through counsel, filed a timely appeal on September 14, 2006 and argues that the petitioner has adequately established that he has been battered by and subjected to extreme cruelty by his spouse and that he entered into his marriage in good faith. As will be discussed, upon review of the record we find that the petitioner has established that he was battered by his spouse, that he was subjected to extreme cruelty by his spouse, and that he entered into his marriage in good faith.

Battery and Extreme Cruelty

The majority of the petitioner's statements are dedicated to describing his spouse's alcoholism. The petitioner describes his spouse as being agitated, neglectful of her dog and home, and chaotic. While we do not dispute the petitioner's claims regarding his spouse's alcoholism, there is no indication that the petitioner's actions towards the petitioner were part of the "cycle of abuse" or that her actions were used as "a means to control" the petitioner, but rather that her actions in being neglectful and unreliable were the result of her alcohol abuse. Accordingly, the petitioner's claims related to his spouse's alcohol abuse are not sufficient to establish that he was subjected to extreme cruelty by his spouse.

Despite the insufficiency of these claims, however, the petitioner's statement also contains specific descriptions of both physical and verbal abuse inflicted upon him by his spouse. In finding the petitioner's evidence insufficient to establish his eligibility, the director noted in his denial that the petitioner failed to provide "corroborating documentation" to establish his claims. The director's requirement of "corroborating documentation" is not supported by the statute or regulations. See 8 C.F.R. § 204.1(f)(1). Accordingly, the petitioner's failure to provide corroborating evidence is not sufficient reason to deny a petition.

Because all of the evidence related to the petitioner's claim of abuse is based upon statements made by the petitioner, we must make a determination regarding the petitioner's credibility. Although the director found that the record contained "insufficient credible evidence," the director did not point to any inconsistencies in the record or provide any discussion regarding why he determined the petitioner lacked credibility. Upon review, we can find no reason to doubt the veracity of the petitioner's statements. He does not appear to have exaggerated his claims regarding the actions of his spouse or to have made claims that were not genuine. Upon review of the record, we find that although the petitioner's claim of abuse is based solely upon his testimonial evidence, his statements contain specific and lengthy descriptions of his spouse's actions which document instances of both battery and extreme cruelty perpetrated against him by his spouse. We, therefore, withdraw the director's finding that the petitioner failed to establish that he had been battered by or subjected to extreme cruelty by his spouse.

Good Faith Marriage

In his initial statement, the petitioner described how he met his spouse and provided details regarding their brief courtship and life together after their marriage. The petitioner also described how he helped to pay for the petitioner's car and transferred his own car over to her. Additionally, the petitioner submitted two greeting cards from the petitioner's spouse to the petitioner. In response to the director's NOID, the petitioner submitted *inter alia*, an automobile insurance policy which listed the petitioner and his spouse as co-insured on the policy and evidence to corroborate his previous claim regarding the transfer of his car to his spouse. The petitioner

also submitted a letter from [REDACTED] a friend of the petitioner, who describes how he set the petitioner up with his spouse and other details surrounding the petitioner's courtship and married life.⁴

After listing the evidence contained in the record, the director found that although "the submitted documentation may establish that [the petitioner] resided with [his spouse, his] intentions surrounding [his] marriage remain unclear to the Service." In reaching the conclusion that the petitioner failed to establish his "intentions" to the satisfaction of the director, the director did not discuss either of the two statements submitted by the petitioner. As previously discussed, the statements submitted by the petitioner contain detailed descriptions of the petitioner's feelings for his spouse, information regarding how they met and of their life together. The petitioner also provided an explanation for the lack of other documentary evidence. As previously noted, the director gave no indication that he found the petitioner's statements to lack credibility. As such, we can find no explanation for the director's failure to consider and discuss the claims of the petitioner himself when finding that he failed to establish his "intentions."

The regulations contain no specific formula for determining whether a petitioner has entered into his or her marriage in good faith. Rather, pursuant to the statute and regulation, the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. *See* Section 204(a)(1)(J) of the Act, 8 U.S.C. §1154(a)(1)(J); 8 C.F.R. § 204.2(2)(i). In this instance, although the petitioner has submitted little probative documentary evidence to support his claim of a good faith marriage, we find that with the combined documentary evidence and the detailed and credible testimonial evidence of the petitioner and his affiants, the petitioner has sufficiently established that he entered into his marriage in good faith. We, therefore, withdraw the director's findings in this regard.

As discussed above, on appeal, we find that the petitioner has established that he was battered by and subjected to extreme cruelty by his spouse and that he entered into his marriage in good faith. We find no other grounds precluding approval of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, the petitioner has overcome the findings of the director and sustained that burden.

ORDER: The denial of the petition is withdrawn. The appeal is sustained and the petition is approved.

⁴ We note that although the petitioner claims in response to the NOID that he enclosed photographs, the record does not contain any photographs of the petitioner and his spouse.