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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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DEC 04 2007

FILE:

[REDACTED]
EAC 05 014 52762

Office: VERMONT SERVICE CENTER

Date:

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. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The January 10, 2007 decision of the director will be affirmed and the petition will be denied.

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 or a child of 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).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The director initially denied the petition on July 6, 2005, finding that the petitioner failed to establish that he entered into his marriage in good faith. On appeal, the AAO concurred with the findings of the director regarding the petitioner's failure to establish that he entered into his marriage in good faith. In addition, the AAO found that the petitioner failed to establish that he is a person of good moral character. However, the AAO remanded the case because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Upon remand, the director issued a NOID on June 26, 2006, in accordance with the AAO's March 29, 2006 remand decision. The petitioner, through counsel, timely responded to the director's NOID with additional evidence. On January 10, 2007, after addressing the additional evidence received into the record, the director found that the petitioner had sufficiently established that he is a person of good moral character. However, the director found that the petitioner failed to establish that he entered into his marriage in good faith. The director's discussion will not be repeated here. The director certified her decision to the AAO for review and notified the petitioner, through counsel, that he could submit a brief to the AAO within 30 days of service of the director's decision. In response to the director's certification notice, counsel submitted a brief. As all of the relevant evidence submitted prior to the AAO's remand has been adequately discussed, our review focuses on the evidence related to the petitioner's claim of a good faith marriage that was submitted in response to the director's NOID and the arguments made in counsel's brief. Upon review, we concur with the director's determination.

The documentary evidence submitted by the petitioner consists of a tax rebate check issued by the State of New Jersey to both the petitioner and his spouse. Counsel argues that this document is "the ultimate proof" of

commingling of assets and liabilities. While we agree that this document is proof of the commingling of finances, we do not find it carries sufficient weight to establish the petitioner's claim of a good faith marriage. Although the petitioner claims a relationship of at least two years, this is the sole document submitted to show shared assets. Moreover, this document is dated July 2006 and is presumably a check resulting from information provided for the 2005 tax year. The instant petition was filed in 2004 and the petitioner must establish his eligibility at that time. A petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Counsel contends that the petitioner lacks documentary evidence of his good faith marriage because he never had an employment authorization card, a social security number, and driver's license. While we do agree with counsel that lacking this documentation may limit an alien's ability to obtain certain information or open some accounts, it does not affect an alien's ability to file taxes. In this instance, the petitioner has provided no indication of the filing of joint taxes for the 2002, 2003, and 2004 tax years. The lack of documentary evidence is not necessarily disqualifying if the petitioner submits detailed, credible, and consistent testimonial evidence. In this instance, however, the testimonial evidence is not sufficient.

The testimonial evidence consists of an affidavit from the petitioner, five statements submitted on his behalf, and a letter from the petitioner's probation agent. The affidavit from the petitioner and the statements submitted on the petitioner's behalf do not provide any probative details regarding the petitioner's good faith marriage. In his statement, the petitioner provides no information regarding when he met his spouse, how long their courtship lasted, or any other specific information regarding their relationship prior to their marriage. Rather, he indicates that he met his spouse at a convenience store, that they started to talk and then dated. The petitioner states that they would go for walks, at one time discussed adopting a child, and that their marriage grew from a friendship to love. The statement from the petitioner's sister-in-law, [REDACTED] provides no information regarding the petitioner's courtship with his spouse or her observations of the couple prior to their marriage. Rather, her statement begins with the acknowledgment that her sister married the petitioner and goes on to generally describe occasions that occurred after their marriage. She does not indicate that she was present during any of these occasions or provide specific details about the petitioner's shared events with his spouse. The statements from [REDACTED], President of Quick Corner Food Stores, Inc., and [REDACTED], of Crescent Taxi, Inc. provide even fewer details regarding the petitioner's good faith marriage. [REDACTED] states only that the petitioner and his spouse were "regular patrons" at his store. [REDACTED] states that the petitioner and his spouse had been customers since 2003 and that the company picked them up on a regular basis at their residence. Neither statement gives any details of the petitioner's relationship with his spouse prior to their marriage. Moreover, the statements fail to offer any probative details regarding the petitioner's interactions with his spouse that would add evidentiary value to the petitioner's claim of a good faith marriage. Similarly, the affidavit from [REDACTED] the petitioner's previous attorney, indicates that based upon two meetings in his office, it was his "personal perception . . . that the marriage is a bona fide one." [REDACTED] does not provide a description of either of these meetings or indicate what he observed between the petitioner and his spouse to make the determination that their marriage was bona fide. Finally, the letter from the petitioner's probation agent states only that the petitioner's spouse resided with the petitioner. The letter does not provide any details regarding interactions that he witnessed or other specific information about their relationship.

Accordingly, we concur with the findings of the director that the petitioner has not established that he entered into his marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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. Accordingly, the January 10, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The January 10, 2007 decision of the director is affirmed.