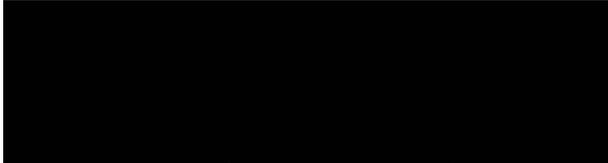


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PHOTOCOPY



125

FILE:

EAC 05 240 51838

Office: VERMONT SERVICE CENTER

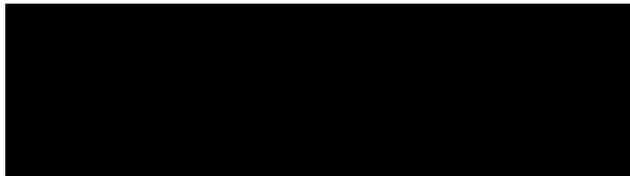
Date: DEC 11 2008

IN RE:

Petitioner:

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

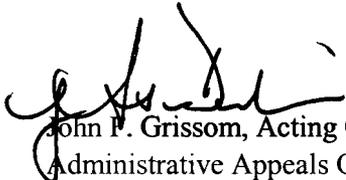
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John P. Grissom, Acting Chief
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 appeal will be dismissed. The petition will be denied.

The petitioner seeks immigrant classification under 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 battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition for failure to establish that the petitioner entered into the marriage in good faith.

On appeal, counsel for the petitioner submits the petitioner's December 18, 2006 statement; photocopies of four withdrawal tickets on a bank account; and resubmits a July 1, 2006 report prepared by [REDACTED] MA, Psychotherapist.

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, 8 U.S.C. § 1154(a)(1)(J), 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].

The eligibility requirements are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 director in this matter issued a request for further evidence (RFE) on February 21, 2006 requesting evidence to establish that the petitioner resided with his spouse, that the petitioner had been subjected to battery or extreme cruelty perpetrated by his spouse during their marriage, that the petitioner is an individual with good moral character, and that the petitioner entered into the qualifying relationship in good faith. The petitioner requested additional time to provide the requested evidence. On May 14, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, observing that the petitioner had not further responded to the RFE and that the record did not provide sufficient evidence on these issues to establish that he had resided with his spouse, that he had been subjected to battery or extreme

cruelty perpetrated by his spouse during their marriage, that he is an individual with good moral character, and that he entered into the qualifying relationship in good faith.

In a July 12, 2006 response to the NOID, counsel for the petitioner submitted the petitioner's statement; a copy of a summons and family offense petition filed by the petitioner in New York State Family Court; an August 29, 2005 copy of a temporary order of protection issued by the New York State Family Court, Queens County; a copy of a police incident report along with a copy of the criminal complaint against the petitioner's wife issued by the New York Criminal Court; a copy of an order of protection issued by the Criminal Court of the City of New York; a printout from the New York State Unified Court System showing the case against the petitioner's wife still pending; a July 1, 2006 report prepared by [REDACTED] Psychotherapist; and affidavits signed by [REDACTED], [REDACTED], and [REDACTED]. Counsel asserted that these documents established that the petitioner had been subjected to extreme cruelty by his wife during the marriage.

Counsel also provided a police clearance from India, a police clearance from New York State, and subsequently a response from the Federal Bureau of Investigation fingerprint clearance. Counsel asserted that these documents established that the petitioner is a person of good moral character.

The director in her December 6, 2006 decision determined that the petitioner had submitted sufficient evidence to establish that he had resided with his spouse, that he had been subjected to extreme cruelty perpetrated by his spouse during the marriage, and that he is a person of good moral character. The director determined however, that the petitioner had not established that he had entered into the marriage in good faith.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of India who was admitted to the United States on May 23, 2000 on an F-1 student visa. In a July 12, 2006 affidavit, the petitioner states that he met K-D-¹ at a New Year's Eve party in Connecticut on December 31, 2002. The petitioner reports that he was living in Edinboro, Pennsylvania studying at Edinboro University at that time. He indicates that in January 2003, he and the petitioner began dating and he frequently commuted to New York, at least once a month. He claims that K-D- suggested that he move to New York and he did so in May 2003 and enrolled in Queens College, City University of New York. He states that he shared an apartment with a few friends from May 2003 to July 2003 and in August 2003 he and K-D- moved into [REDACTED], Rego Park, New York. The petitioner claims that his grandparents visited, his mother visited and that K-D-'s mother and her relatives were regular visitors to their apartment. On April 30, 2004, the petitioner married K-D-, a United States citizen. The petitioner notes that he was not ready for marriage, but as women in India marry at a younger age and do not live with their boyfriends he agreed to get married. The petitioner states that after they married, K-D- started harassing him, raising her voice for no reason, and that as K-D- worked he did all the domestic work. The petitioner declares that he did not marry

¹ Name withheld to protect individual's identity.

K-D- for a green card. The petitioner indicates that he did not have any joint accounts with K-D- and when he suggested that they open a joint bank account, K-D- said "No." The remaining portion of the petitioner's affidavit relates to the abuse he claims was perpetrated by K-D-. The petitioner notes that the next day after an incident on August 15, 2004 between the petitioner and K-D-, he left their apartment with only his clothes. The record includes one photograph of the petitioner and K-D- and no information pertinent to the time or significance of the photograph.

The affidavits of [REDACTED] and [REDACTED] describe incidents of verbal abuse but do not provide any probative details regarding their observations of the petitioner's allegedly good faith entry into marriage with his wife. The affiants state that they knew the petitioner and his wife, were invited to attend a dinner, or visited the former couple, but the affiants do not describe any particular incidents where they witnessed the alleged *bona fides* of the former couple's marital relationship.

The director noted that the petitioner's administrative record included a statement from Commerce Bank addressed to both the petitioner and K-D- dated July 21, 2004 and statements from Citibank addressed to both the petitioner and K-D- dated January 29, February 29, and March 25, 2004. The director found that the petitioner's statement that he and K-D- did not have any joint accounts conflicted with the bank and credit card statements in the file and called into question the petitioner's credibility. On appeal, the petitioner claims that he did not open a bank account and believes that K-D- who worked at Commerce Bank could have opened the accounts. The AAO finds that the joint bank statement and the credit card statements whether opened with the petitioner's consent and knowledge or not, are insufficient to establish the petitioner's intent in marrying K-D-.

The record does not include information other than one photograph of the couple and the petitioner's general statement regarding the circumstances of meeting K-D- and commuting, and then moving to New York. Despite a claimed relationship of over a year and a half, the petitioner provides no other photographs of shared events or special occasions either prior to or after their marriage. In addition, the petitioner reports that upon moving to New York he first shared an apartment with friends from May 2003 to July 2003 prior to moving in with K-D- in August 2003 at the Rego Park, New York location; however, the petitioner's G-325A, Biographical Information, shows that the petitioner moved from Edinboro, Pennsylvania in May 2003 directly to the Rego, New York address in April 2003. The conflicting statements regarding the petitioner's address after leaving Pennsylvania detracts from the credibility of his claim. 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, at 591-92. The failure to provide consistent information in the forms filed with United States Citizenship and Immigration Services (USCIS) and the petitioner's statement diminishes the credibility of the petitioner's claim of an ongoing relationship with K-D- that resulted in a marriage entered into in good faith.

Although the petitioner has provided general information regarding how he met K-D-, his statements

do not offer probative details of their life together before or after their marriage except as it relates to the claimed abuse. The record does not include substantive detail regarding the petitioner's relationship with K-D-, their interactions with each other, or any of their shared experiences, apart from the alleged abuse. Accordingly, the petitioner has not demonstrated that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

We concur with the director's determination that the petitioner has not demonstrated entry into a good faith marriage. Accordingly, based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Beyond the decision of the director, the petitioner has not established he resided with the K-D- from August 2003 to August 16, 2004. The petitioner in his personal statement indicates that he moved in with K-D- in August 2003 and resided with her at the Rego Park, New York address until August 2004. The petitioner notes that the Rego Park, New York apartment was a gift to K-D- from her mother.

The record also includes the affidavits signed by [REDACTED] and [REDACTED]. [REDACTED] declares that he visited the petitioner and K-D- on May 16, 2006 at their residence in Rego Park and that he called the petitioner many times on his home telephone and that often K-D- would answer the phone. [REDACTED] declares that he visited the petitioner and K-D- at their Rego Park address on May 2, 2004 and that "[t]hey invited me for dinner on the eve of their marriage few days earlier" and that he had also visited them on other days. [REDACTED] declares that between November 2003 and August 2004 he visited the petitioner and K-D-'s residence many times including on May 2, 2004 and that he called the petitioner many times on his home as well as his cell phone. [REDACTED] et states that K-D-answered the phone when he called the petitioner's home number. [REDACTED] declares that he visited the petitioner and K-D- on or about May 2, 2004 at their residence. [REDACTED] states that "[t]hey invited [him] for dinner on the eve of their marriage which took place a couple of days before." [REDACTED] further declares that he visited the petitioner and K-D- on August 1, 2004 and called the petitioner on his home phone number at the [REDACTED] residence. [REDACTED] declares that he visited the petitioner and K-D- on May 16, 2004 with his friend [REDACTED] as the couple had invited him for a get together on that day.

As referenced above, the record also includes a statement from Commerce Bank addressed to both the petitioner and K-D- dated July 21, 2004 at the Rego Park address and statements from Citibank addressed to both the petitioner and K-D- dated January 29, February 29, and March 25, 2004 at the [REDACTED] address. Also as observed above, the petitioner claimed in his July 12, 2006 personal statement that he and K-D- did not have any joint accounts and on appeal explains his belief that K-D- who worked at Commerce Bank opened these accounts by forging his name. The record also includes one photograph of the couple.

Other than the affidavits, one photograph, and the claimed fraudulent bank and credit card statements, the record does not include any evidence of the petitioner and K-D-living at the address.

The AAO notes that the affidavits generally refer to a get together around the April 30, 2004 wedding and on May 16 and provide general statements that when they called the petitioner at his home phone he or K-D- would answer. These statements are insufficient to establish that the petitioner resided at the address for over a year as he claims in the personal statement submitted. The lack of detail and information regarding the petitioner's residence minimizes the probative value of the affidavits. The AAO acknowledges the petitioner's statement that he left the Rego Park apartment in August 2004 with only his clothes. However, the petitioner also includes information in the record that he had his own bank account, but the petitioner has not provided any statements from a bank or any institutions that indicate he resided at the Rego Park address for a year. In addition, as referenced earlier the petitioner has given conflicting information regarding his residence once he moved from Pennsylvania to New York. The scant documentary evidence submitted by the petitioner regarding his residence at the Rego Park address is insufficient to establish his residence at the location. Accordingly, the petitioner has failed to establish that he resided with his former spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. We, therefore, withdraw the director's finding that the petitioner met this requirement.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As always 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.

ORDER: The appeal is dismissed. The petition is denied.