



U.S. Citizenship
and Immigration
Services

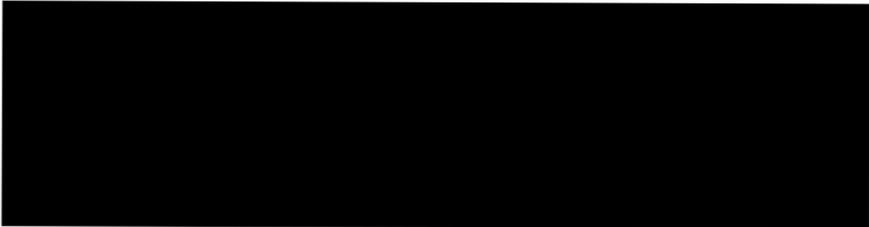
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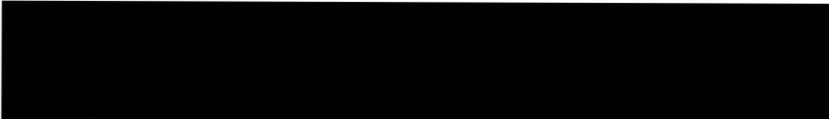
FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUL 01 2008
EAC 05 032 53113

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.


2 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 May 23, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii) 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), further states:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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 September 29, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse and that he entered into his marriage in good faith. On appeal, the AAO concurred with the determination of the director. In addition, the AAO noted inconsistencies in the record regarding the petitioner's claim of residence with his spouse and irregularities on his marriage certificate. However, the AAO remanded the case on June 7, 2006 because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) in compliance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹

Upon remand, the director issued a NOID on August 11, 2006, which notified the petitioner of the deficiencies in the record and afforded him the opportunity to establish his claim of residence, abuse and good faith marriage. In addition, the director requested additional evidence regarding the petitioner's good moral character and evidence that his marriage license and certificate were recorded in New Jersey. In a letter dated September 29, 2006, counsel for the petitioner requested an extension of time in which to respond to the NOID. The director granted the request for an extension on January 17, 2007. On March 12, 2007, the petitioner, through counsel, responded with additional evidence. On May 23, 2007, after considering the evidence submitted in response to the NOID, the director found that the petitioner had adequately established the validity of his marriage certificate and his good moral character. However, the director determined that

¹ On April 17, 2007, Citizenship and Immigration Services (CIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100-19107. The rule became effective on June 18, 2007, after the filing and adjudication of this petition.

the petitioner failed to establish that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse and that he entered into his marriage in good faith. The director's discussion will not be repeated here. The director certified his 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 a letter dated June 26, 2007, counsel requested additional time in which to submit a brief. The request was denied on July 3, 2007.² As such, the record is considered to be complete as it now stands.

The relevant evidence submitted below was fully addressed in our prior decision, which is incorporated here by reference. Accordingly, we will only address the material submitted since that decision was issued which consists of the evidence submitted in response to the NOID.

Residence

Despite the specific discussion in both the AAO's previous decision and the director's NOID of the discrepancies regarding the petitioner's alleged residence with his spouse, the petitioner offered no explanation for the inconsistencies in the record. 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, 591-92 (BIA 1988). In fact, the petitioner's statement provided no further testimonial evidence regarding his alleged residence with his spouse. Although the petitioner did submit statements from two of his friends, only one of the letters even briefly references the fact that the petitioner and his spouse shared a home. The statement, however, provides no dates, address, or other specific and probative details to support the petitioner's claim of a joint residence with his spouse.

Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

As it relates to his claim of abuse, in response to the director's NOID the petitioner submitted a new personal statement, two statements from friends, an updated psychological evaluation, and what the petitioner purports to be a statement from his spouse.

In his new statement, the petitioner reiterates the claims made below regarding his spouse's drug and alcohol addictions, her arrests, verbal abuse and social isolation, all of which were previously found to be deficient. The petitioner offers no further probative details regarding specific acts perpetrated against him by his spouse to establish that her actions rose to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Further, regarding the alleged physical abuse, in our previous decision, we stated:

² Although the regulations allow the AAO to extend the period for filing a brief *on appeal* for good cause shown, no such provision exists for cases before the AAO *on certification*. Compare 8 C.F.R. § 103.3(a)(2)(vii) with 8 C.F.R. § 103.4(a)(2).

Regarding the evidence of physical abuse, although the petitioner's initial statement indicates that when his spouse got [angry] she would "start screaming and yelling becoming very abusive, both verbally and physically," the petitioner does not describe any specific physical incident in detail. If, as counsel claims, "abused individuals tend to easily open up to psychologists about intimate details regarding their problems," we would expect to see physical abuse documented in the petitioner's psychological evaluation. However, not one incident of physical abuse is mentioned in the psychological evaluation. Moreover, if, as counsel further claims, "survivors of domestic violence are understandably uncomfortable to discuss their abuse in great detail" and will "comply with an adjudicator's request for more information in successive affidavits," we would expect the petitioner to have elaborated on his physical abuse claim in his second statement or even on appeal. However, the petitioner's second statement does not make any reference to physical abuse, much less provide greater details related to the claim in the first statement and no further evidence was submitted on appeal. Further, neither of the affidavits provided by the petitioner's friends allege physical abuse.

The petitioner failed to provide any further testimonial or documentary evidence of the claimed physical abuse.

The letters submitted on the petitioner's behalf contain only general statements regarding the petitioner's spouse's alleged "abusive behavior." [REDACTED] states that he witnessed the petitioner's spouse's "sudden change in behavior," and indicates that she started arguments in front of the petitioner's friends, which embarrassed the petitioner. Similarly, [REDACTED] states only that the petitioner tried to resolve his "marital problems." Neither letter elaborates on the petitioner's spouse's specific behavior or the problems in his marriage.

The updated psychological evaluation focuses on the petitioner's "affective reactions and emotional status" after his separation. It does not, however, provide any details regarding the alleged physical abuse or extreme cruelty perpetrated against the petitioner during his marriage.

Finally, the petitioner's spouse statement, which acknowledges "certain unacceptable behavior," the fact that she "did not take [her] wedding vows too seriously," and that she criticized the petitioner, is not sufficient to establish that she battered the petitioner or subjected him to extreme cruelty.

Accordingly, we concur with the finding of the director that the petitioner failed to demonstrate that he was battered or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Marriage

In his personal statement, the petitioner generally claims that he fell in love with his spouse and intended to share a life with her. He offers no further testimonial evidence regarding how he met his spouse, their relationship prior to their marriage, such as shared events and special occasions, and their life together after their marriage, except as it relates to the claimed abuse. The statements submitted on the petitioner's behalf are similarly lacking. [REDACTED] states only that the petitioner was attracted to his spouse, "seemed excited" to share his life with her, and that there is "no doubt in [Mr [REDACTED] s] mind that [the petitioner] and his wife married in good faith." [REDACTED] states that the petitioner's spouse was "very involved" in the

petitioner's life and knew all his friends and family members. The statements, however, do not specifically describe any particular occasion shared with the petitioner and his spouse or the actions of the petitioner and his spouse that resulted in the friends' impression that the petitioner entered into his marriage in good faith.

Finally, the alleged statement from the petitioner's spouse only relates the petitioner's spouse's feelings for the petitioner and her intent in marrying the petitioner. The statement does not provide any probative details to establish that the petitioner intended to share a life with his spouse. Further, the statement does not contain any description of how they met, their courtship, or any other probative details which demonstrate the petitioner entered into his marriage in good faith. Accordingly, we concur with the director's finding that the petitioner failed to establish that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

In sum, the petitioner has failed to establish that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse during his marriage, and that he entered into his marriage in good faith. Accordingly, he is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 March 23, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The March 23, 2007 decision of the director is affirmed.