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**U.S. Citizenship  
and Immigration  
Services**

139

FILE:

EAC 05 156 52643

Office: VERMONT SERVICE CENTER

Date: JUL 02 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.

Robert P. Wiemann, 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 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 finding that the petitioner failed to establish that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse during their marriage, and that he entered into their marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

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 explicated 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.

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

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Egypt who was admitted to the United States on December 31, 2001 as a nonimmigrant visitor (B-2). On June 14, 2002, the petitioner married M-W-,<sup>1</sup> a United States citizen, in California. The petitioner filed the instant Form I-360 on May 9, 2005 and he and M-W- were divorced on September 27, 2005.<sup>2</sup> The director issued a Request for Evidence (RFE) on December 5, 2005 for additional evidence to establish, *inter alia*, that the petitioner married M-W- in good faith, resided with M-W-, and was battered or subjected to extreme cruelty by M-W-. The petitioner, through counsel, timely responded to the RFE on January 9, 2006. On May 26, 2006, the director issued a Notice of Intent to Deny (NOID) the petition which notified the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish that he resided with M-W-, that he was battered or subjected to extreme cruelty by M-W-, and that he entered into their marriage in good faith. The petitioner, through counsel, timely responded to the NOID on June 29, 2006. After considering the evidence contained in the record, the director denied the petition on September 28, 2006, based on the grounds cited in the NOID.

On appeal, counsel argues that the director “disregarded the evidence of record” and contends that the petitioner meets the eligibility requirements. In support of the appeal, the petitioner submits a new personal statement and three affidavits from acquaintances. As will be discussed, upon review, we concur with the findings of the director.

#### *Residence*

On the Form I-360, the petitioner indicated that he resided with M-W- from June 2002 until April 2005 and that they last resided together at [REDACTED] in Downey, California. At the time of filing, the petitioner submitted no testimonial evidence identifying the specific dates and addresses where they resided together or other information such as a description of their homes and their shared possessions. Although the petitioner also submitted an Incident Report from the Downey police department and documentation related to his temporary restraining order which listed his address at [REDACTED], he submitted no evidence of M-W-'s residence at that address. In fact, on the Request for Order, DV-100, filed by the petitioner on April 27, 2005, the petitioner stated that his wife is a drug addict “who lives from place to place with no real permanent address.” Further, although the petitioner’s marriage license lists an address at [REDACTED],” the petitioner provides no testimonial or documentary evidence regarding this address with M-W-.

In response to the director’s RFE, the petitioner submitted copies of his and M-W-’s jointly filed federal income tax returns for 2002, 2003, and 2004. The 2003 and 2004 returns list the petitioner’s and M-W-’s address at [REDACTED] and the 2002 return lists their address at [REDACTED]. However, the petitioner submits no evidence to demonstrate that these returns were actually filed. Of greater concern is the fact that the social security number listed for the petitioner’s spouse on each of these tax returns does not match the number on her social security card which is also contained in the record. Given

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<sup>1</sup> Name withheld to protect individual’s identity.

<sup>2</sup> Superior Court of California, County of Los Angeles, Notice of Entry of Judgment, Case Number: [REDACTED].

the inconsistency between M-W-'s listed social security number on the tax returns and her actual social security number, we question the validity of the submitted tax returns. 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). No further evidence regarding their joint residence was submitted in response to the director's NOID.

On appeal, the petitioner states when M-W- left their home, she took all of their photographs and "memorabilia" and because of that the tax returns and his testimony "are the sole information" he has to establish his residence with M-W-. As indicated above, however, the petitioner has submitted no testimonial evidence regarding his residence with M-W- and provides no further discussion of their residence on appeal. While the petitioner does submit three affidavits from friends who generally indicate that they have "personally known and . . . been acquainted with M-W-," the affidavits do not contain any probative details regarding the claimed joint residence, such as a description of specific occasions spent at the petitioner's home. More importantly, the affidavits contain contradictory information regarding the petitioner's dates of residence. Specifically, [REDACTED] claims that the petitioner resided at [REDACTED] from November 2003 until July 2005 while [REDACTED] and [REDACTED] claim the petitioner began residing at that address in April 2003. 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. at 591-92.

As discussed above, the petitioner has failed to submit sufficient evidence to establish that he resided with M-W-. The sole documentary evidence consists of copies of three federal income tax returns with no evidence that the returns were actually filed and with incorrect personal information relating to M-W-. Although the lack of documentary evidence is not necessarily disqualifying, the evidence that was submitted by the petitioner is of questionable authenticity. Further, the petitioner has offered no probative testimonial evidence regarding any of his claimed residences with C-W-. The evidence submitted on his behalf by his friends contains both insufficient and contradictory information regarding the petitioner's residence with C-W-. Accordingly, we concur with the decision of the director that the petitioner failed to establish that he resided with C-W-, as required by 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

At the time of filing, the petitioner failed to submit any personal statement regarding the alleged battery or extreme cruelty perpetrated against him by M-W- during their marriage. As documentary evidence, the petitioner submitted an Incident Report which identifies M-W- as a missing person and documentation related to the temporary restraining order the petitioner obtained against C-W-. In his statement requesting a restraining order, dated April 26, 2005, the petitioner alleged that nearly two weeks earlier, C-W- asked him to meet her at a particular location and that when he got there M-W- "reached into [his] open drivers window grabbed [him] by the throat and demanded money stating she was going to kill me if [he] didn't give her money." The petitioner further claims that he was able to break free and drive away and that although M-W-

attempted to follow him, he subsequently lost her in traffic. In response to the director's RFE, the petitioner submitted no further testimonial evidence regarding the alleged abuse, but did submit documents which indicate that neither the petitioner nor M-W- appeared in court and that the temporary restraining order was dissolved. In response to the NOID, counsel submitted a letter dated June 23, 2006 in which he indicated that the petitioner's "state court restraining order case . . . could not be completed due to his inability to serve [M-W-] after she ran off." While it may be true that M-W-'s whereabouts were unknown at that time, counsel's statement does not explain why the petitioner failed to appear in court to pursue the restraining order. Regardless, 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). The petitioner himself submitted no further testimonial evidence regarding the claimed abuse or explanation regarding his failure to follow through on his protection order.

On appeal, the petitioner states that M-W-'s behavior was "both confusing and heartbreaking." The petitioner generally claims that M-W- "began to change" and that "she said and did things that indicated that she had no interest or concern" for him. He does not, however, elaborate on the "things" that M-W- allegedly did. Although the petitioner also generally references an incident in May 2005 where he claims M-W- threatened to kill him, he provides no further probative details regarding this incident. Although it appears that the petitioner is referring to the incident described in his Request for Order, that incident purportedly occurred on April 16, 2005, not May 2005 as indicated on appeal. If this is indeed the same incident, this inconsistency diminishes the petitioner's claim. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

As discussed above, the documentary evidence contained in the record is insufficient to establish the petitioner's claim of abuse. The petitioner has only generally described a single incident where he was allegedly threatened and physically assaulted by M-W-. The petitioner's vague reference to this incident on appeal contains conflicting testimony regarding the date the incident occurred. Further, the petitioner offers no specific testimonial evidence regarding the alleged extreme cruelty perpetrated against him by M-W- which demonstrates that her behavior rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Accordingly, the petitioner failed to establish that he was battered or subjected to extreme cruelty by M-W- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Faith Entry into Marriage*

As evidence of his good faith entry into marriage, the petitioner submitted copies of three years of his jointly filed federal income tax returns and his marriage certificate. Although the petitioner claims that these returns were actually filed with the Internal Revenue Service, we note that neither the petitioner nor M-W- dated the forms after their signature and the record contains no evidence that the returns were filed as claimed. Further, while the marriage certificate is evidence of a legal marriage, the fact that a *legal marriage* took place does not establish that the marriage was entered into in good faith. The petitioner did not provide any testimonial evidence which discussed how he met his spouse, their courtship, shared events or any other

probative information regarding their relationship to establish his feelings and intent at the time of his marriage.

On appeal, the petitioner states:

I have expressed in my earlier submissions that I did indeed marry my wife for love and in the hopes of establishing a lasting marital union. We cohabited following the ceremony. If it is an issue, I state that we partook of our marital rights and the union was duly consummated [sic].

Contrary to the petitioner's statement, the record contains no "earlier submission" from the petitioner which provides any information regarding his good faith intent in marrying his spouse. The general statement on appeal that he loved his wife and hoped to establish a lasting union offers no probative details of their relationship to support a finding that he entered into his marriage in good faith. Similarly, the affidavits submitted on his behalf fail to provide any specific information regarding the petitioner's relationship with M-W- other than to acknowledge their personal acquaintance with her.

Accordingly, we concur with the finding of the director that the documentary evidence contained in the record and the testimonial evidence submitted by the petitioner and on his behalf is insufficient 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.

The petition will be denied for the reasons stated above, 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.