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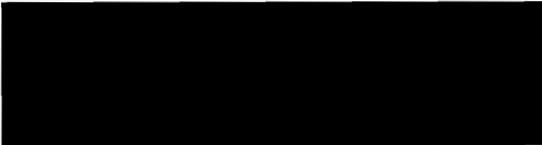
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY

By



FILE: [Redacted]
EAC 05 179 52672

Office: VERMONT SERVICE CENTER

Date: MAR 26 2008

IN RE: Petitioner: [Redacted]

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:

SELF-REPRESENTED

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.

Maura Deadrick
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 matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification pursuant to 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.

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 states, in pertinent part:

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].

In this case, the director initially denied the petition on January 19, 2006 for failure to establish the requisite good-faith entry into the marriage, joint residence, battery or extreme cruelty and good moral character. In its November 16, 2006 decision on appeal, the AAO concurred with the director's determinations but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on December 27, 2006, which informed the petitioner that he had failed to establish that he entered into his marriage in good faith, that he resided with his spouse, that she subjected him or his child to battery or extreme cruelty during their marriage and that he was a person of good moral character. The petitioner responded to the NOID with additional evidence, which the director found sufficient only to establish his good moral character. Accordingly, the director denied the petition on May 7, 2007 on the remaining three grounds cited in the NOID. In his Notice of Certification, the director informed the petitioner that he could submit a brief to the AAO within 30 days after service of the certified decision. To date, the AAO has received nothing further from the petitioner.

The pertinent facts and relevant evidence submitted below were discussed in our prior decision, incorporated here by reference. Accordingly, we will only address the relevant evidence submitted after that decision was issued.

Battery or Extreme Cruelty

In response to the NOID, the petitioner submitted his March 13, 2006 statement and his January 28, 2007 letter in which he states that his wife rejected him after he returned from Iran with his son. He reports that she did not want to have intimate relations with him and told the petitioner that he “was not man enough” because he could not “satisfy her physically” and could not make enough money. The petitioner further states that his wife called him derogatory names, slammed doors, broke dishes and other things around the house, and threatened not to “come to Immigration.” The petitioner also says that his wife was ashamed of him because of he spoke English with an accent and sometimes had difficulty with the language. The petitioner further reports that he developed skin discoloration due to the stress of his marriage.

As noted by the director, the petitioner’s claims in his January 28, 2007 letter differ significantly from his account of his marriage in his July 30, 2005 statement where he attributed the problems in their relationship to his unemployment and care for his son and described their estrangement leading to his move to Houston and later Dallas without his wife. In his 2005 statement, the petitioner attested that he did not know what was wrong with their relationship because his wife “would not tell [him].” Yet, in his 2007 letter, the petitioner states that his life was a “living nightmare” because of his wife’s accusations, screaming and name-calling. The petitioner provides no explanation for the discrepancies in his statements, which detract from the credibility of his testimony. Yet even if fully credible, the behavior of the petitioner’s wife, as described in his 2007 letter, does not rise to the level of battery or extreme cruelty.

The petitioner claimed that he suffered from skin discoloration arising from the stress of his marriage, but, as noted by the director, the photographs the petitioner submitted to support his claim do not clearly show such discoloration and the petitioner submitted no medical records or other evidence to document his medical condition.

We concur with the director’s determination that the petitioner has failed to establish that his wife subjected him or his son to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Joint Residence

In response to the NOID, the petitioner submitted a cable television bill jointly addressed to the petitioner and his wife, but dated after their separation. The petitioner also submitted a letter from Washington Mutual Bank confirming that the petitioner and his wife opened a joint account on August 30, 2004, but the letter is addressed to the petitioner individually at his residence in Houston, where the petitioner states his wife never lived with him. In his March 13, 2006 letter, the petitioner states, “[my wife] controlled my life, and by doing so, she controlled our bills, mail & life. Evidence & documents that she destroyed like my dream.” Yet the petitioner does not describe any specific joint

documentation that his wife destroyed or explain why evidence of their joint residence was unavailable from third parties, such as their bank and cable television company. We concur with the director's determination that the petitioner has not demonstrated that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In response to the NOID, the petitioner submitted his 2007 letter, the cable television bill, bank letter, an Islamic marriage certificate and four photographs of him and his wife. In his 2007 letter, the petitioner provides no further, probative information regarding how he met his wife, their courtship or wedding. The only shared experience that the petitioner describes, apart from the alleged abuse, is that they were "married with Iranian traditions and [his] religious belie[f]s so [he] could get [his wife a] visa to visit Iran and meet [his] family and f[r]iends and the place [he] was born." However, as noted by the director, the petitioner does not explain why the couple waited over a year after their civil marriage to undergo the Islamic marriage ceremony and why, if the petitioner wanted his wife to visit Iran, she did not accompany him when he returned to Iran in 2004 to get his son.

The remaining documents also fail to establish the petitioner's claim. As noted above, the cable television bill is dated after the former couple's separation and is of no probative value. The petitioner submitted no evidence of the establishment and maintenance of the joint account during their marriage. The bank letter confirms that the former couple opened a joint account in 2004, but the letter does not list the location of the bank or provide any documentation of a history of usage of the account by both the petitioner and his wife. Finally, the photographs show that the petitioner and his wife were together on four occasions, but the pictures alone are insufficient to establish the petitioner's good-faith entry into their marriage. Accordingly, we concur with the director's determination that the petitioner did not establish 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.

The May 7, 2007 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that he entered into marriage with his wife in good faith, that he resided with her, and that she subjected him or his son to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The denial of the petition will be affirmed for the three reasons stated above, with each considered 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. The petitioner has not sustained that burden.

ORDER: The director's decision of May 7, 2007 is affirmed. The petition is denied.