

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE: [Redacted]
EAC 06 127 50596

Office: VERMONT SERVICE CENTER

Date: **MAY 12 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:



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 had a qualifying marriage as the spouse of a United States citizen, that he was eligible for immigrant classification based upon that relationship, that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse during their marriage, that he is a person of good moral character, and that he entered into his marriage in good faith.

The petitioner, through counsel, submits a timely appeal with additional evidence.

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 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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.

(ii) *Relationship*. A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner

(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.

(v) *Good moral character*. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

(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 Guyana who was admitted to the United States on September 9, 1999 as a nonimmigrant crewman. On June 30, 2004, the petitioner married C-R-,¹ a United States citizen, in New York. On July 12, 2004, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 and the Form I-485 were denied on February 6, 2006.

The petitioner filed the instant Form I-360 on March 23, 2006. The director issued a Request for Evidence (RFE) on July 7, 2006 of the petitioner's spouse's United States citizenship, the petitioner's residence with his spouse, the battery or extreme cruelty perpetrated against him by his spouse, his good moral character, and good faith marriage. The petitioner, through counsel, responded to the RFE on August 28, 2006. On October 3, 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. The petitioner failed to respond to the director's NOID and the director denied the petition on February 14, 2007, finding that the petitioner failed to establish that he had a qualifying relationship as the spouse of a United States citizen, that he was eligible for immigrant classification based upon that relationship, that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse, that he was a person of good moral character, and that he entered into his marriage in good faith. The petitioner, through counsel, submits a timely appeal with copies of documents that were already contained in the record.

Qualifying Relationship and Eligibility for Immediate Relative Classification

In his RFE and NOID, the director requested that the petitioner submit evidence of his spouse's United States citizenship. The petitioner failed to provide any evidence regarding his spouse's citizenship status and the director denied the petition, in part, based upon the petitioner's failure to establish that his spouse was a citizen of the United States. Upon review, however, we find that at the time of the director's decision, the record contained a copy of the petitioner's spouse's birth certificate that was issued by the City of New York, City Registrar. The birth certificate was submitted in support of the previously filed Form I-130 and Form I-485. We, therefore, withdraw the director's findings on these

¹ Name withheld to protect individual's identity

two issues and find that the petitioner has established that he had a qualifying marriage as the spouse of a United States citizen, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act and that he was eligible for classification based upon that relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Residence

On his Form I-360, the petitioner indicated that he resided with his spouse from June 2004 until December 2004 and that he last resided with his spouse at [REDACTED] Richmond Hill, New York. The petitioner submitted no documentary evidence to support his claim of residence with his spouse. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence contains no specific, probative information regarding the petitioner's claim of a joint residence. In his August 17, 2006 affidavit, the petitioner indicates that his spouse lived at the [REDACTED] address. However, the petitioner does not indicate that he resided there with her or provide any other details regarding their joint residence, such as a description of their home, furnishings and property, or their daily routines. The petitioner further indicates that on some unidentified date, he relocated to Florida for a job, and that his spouse did not go with him. The petitioner claims that he lost contact with his spouse and that when he would try to reach her by telephone, he could not get in touch with her.

An interview summary dated January 20, 2006, shows that the petitioner appeared for an interview in the Miami District Office and advised the interviewing officer that he lived in Florida and that his wife lived in New York. The petitioner also presented a Florida driver's license showing that he was residing in Florida. The license was issued to him on October 18, 2005. Also, according to the Form G-325A, Biographic Information, signed by the petitioner on July 9, 2004, the petitioner had been continuously working as a carpenter for the same employer in Ft. Lauderdale, Florida from November 1999 to at least July 2004.

In addition to his failure to submit sufficient documentary or testimonial evidence in support of his claim of residence, the record demonstrates that the petitioner has made contradictory claims regarding his residence with his spouse. Specifically, although the petitioner indicated on the Form I-360 that he resided with his spouse from June 2004 to December 2004, the Form G-325A indicates that he began residing with his spouse in December 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. 582, 591-92 (BIA 1988).

As discussed above, the evidence submitted by the petitioner is both insufficient and contradictory. Accordingly, the petitioner has failed to establish that he resided with his spouse, as required by 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In his affidavit, the petitioner states that after he got a job offer in Florida, “things began to change” with his spouse. He states:

When I would try to reach [my spouse] via telephone she was always out or I had to leave messages. I would never get any return calls from her, no letters so that was when I realized she was probably having an affair.

I went to New York several times to visit her but there was never anyone home, I was so disappointed. I don’t know what else to do or where to look for her.

The petitioner does not allege that he was threatened by his spouse or that he was actually physically abused by her. Further, the petitioner’s claims regarding being unable to locate his spouse and his belief that she was “probably having an affair,” do not demonstrate that his spouse’s actions rose to the level of extreme cruelty as those acts are 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. Accordingly, the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner’s good moral character is an affidavit from the petitioner, accompanied by a police clearance from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. The director specifically notified the petitioner of these regulatory requirements in both the RFE and the NOID.

The record does not contain police clearances from New York and Florida, where the petitioner indicates that he resided during the three-year period prior to filing. Moreover, the petitioner’s affidavit fails to provide any statement regarding his moral character. Accordingly, the petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Good Faith Entry into Marriage

The petitioner failed to submit any testimonial or documentary evidence to support his claim that he entered into his marriage in good faith. In his affidavit, the petitioner generally states that he met his spouse and “fell in love in New York where [he] was visiting [his] friends.” The petitioner does not provide any specific details regarding his courtship and relationship prior to his marriage, such as a description of how he met his spouse, how long they dated prior to their marriage, his reasons for

marrying his spouse, or any other probative information to establish that he intended to establish a life with his spouse and entered into his marriage in good faith.

The petitioner also submitted no documentary evidence to support his claim of a good faith marriage. In response to the director's RFE, although counsel for the petitioner stated that the petitioner "does not have joint leases, mortgages, bank accounts and such because all the properties and assets are under the wife's name," the petitioner, himself has failed to provide any description of assets and liabilities in their marriage, such as taxes or insurance and provides no explanation for the lack of documentation. **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).

Accordingly, the petitioner failed to demonstrate that he entered into marriage with his spouse 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.