U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

B9

JAN 18 2005

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 03 214 53094

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Special Immigrant Battered 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.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Gambia who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that he has resided with the U.S. citizen spouse, and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a brief and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

> (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
>
> (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

> A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided . . . with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

> *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.

According to the evidence on the record, the petitioner filed an application for asylum on December 8, 1993. The petitioner wed United States citizen on March 12, 1997 in Bronx, New York. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on August 4, 1997. On July 17, 2003, the petitioner filed a Form I-360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage. On November 5, 2003, action was terminated on the Form I-130 petition due to abandonment.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that he has resided with his citizen spouse, and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that he had resided with his spouse, and entered into the marriage in good faith, the director asked him to submit additional evidence. The director listed evidence the petitioner could submit to establish that he had resided with his spouse, and that he married his spouse in good faith.

On appeal, counsel for the petitioner submits a brief and additional evidence.

The director determined and the AAO concurs that the petitioner failed to establish that he had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married his wife in good faith. The petitioner provided Citizenship and Immigration Services (CIS) with his own statements, a letter from that indicates that a savings account was opened in the names of the petitioner and his wife, and joint tax returns for the years 1998 through 2000. He submitted copies of checks he had written on his own account. The petitioner provided copies of bank statements that were in his name alone. He submitted copies of bills that were in the petitioner's name alone.

It is noted that the petitioner failed to submit insurance policies in which he or his wife is named as the beneficiary. He failed to submit evidence that his joint bank account with his wife was an active account. He failed to submit copies of bills listing both the petitioner and his wife as responsible parties. He provided no evidence of joint ownership of property. No children were born of the marriage. On appeal, the petitioner submitted a letter from his cousin that states that the cousin loves his wife and married her in good faith. The petitioner submitted a letter written by a friend of the petitioner that states that the petitioner and his wife were a "good couple." The petitioner also submitted a letter from a laundromat employee that states that the petitioner and his wife often came to his laundromat, that they were a good couple "but later always problem. [sic] 100%

[the petitioner] loves his wife." The letter and affidavits in the record contain little information as to the bona fides of the marriage. The evidence on the record is insufficient to establish that the petitioner married his citizen spouse in good faith.

The director also found that the petitioner had failed to establish that he had resided with his spouse. The record contains scant evidence to demonstrate that the petitioner had resided with his citizen spouse. The evidence consists of the petitioner's statements, a former landlord's letter. The landlord's letter states:

> I was living [sic] the same building with [the petitioner] and [the petitioner's wife.] Since [the petitioner] got [married] they all, him and his wife was living with me. The lease is in my name – pay the rent direct to me. But finally him and start having problems . . . My wife is my life. I love her so much. Thanks. Yours,

It is unclear why the petitioner's landlord would write a letter addressed to whom it may concern indicating that the petitioner, wife, Pia, lived with him and that he, the landlord, loves his own wife named Similarly, the laundromat employee's letter lacks a sufficient basis to state "100% oves his wife."

The director determined and the AAO concurs that the petitioner failed to establish that he had resided with his citizen spouse, as required by 8 C.F.R. § 204.2(c)(1)(i)(D). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had resided with his wife.

The petitioner submitted evidence that was inconsistent with the addresses he listed on his Form I-360 and Form G-325A. According to the information he provided on the Form I-360, the petitioner and his wife resided together at 1197 Grand Concourse, Apt. 2E, Bronx, New York from April 1997 until May 2003. The petitioner also submitted copies of checks he wrote in 2002 showing an address of 1177 Nelson Ave., Apt. 4J, Bronx, New York. He also submitted phone bills dated December 2002, February and March 2003 showing he resided at 1177 Nelson Avenue. The evidence on the record contains a copy of the petitioner's New York State identification card, issued March 5, 1997, showing that she resided at 246 W. 150th Street, Apt. 4E, New York, New York. 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). Based on this conflicting information, the petitioner has not established that he resided with his citizen spouse.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.