



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



B9

FILE:

EAC 05 005 51466

Office: VERMONT SERVICE CENTER

Date: DEC 14 2006

IN RE:

Petitioner:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner seeks immigrant classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of 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 because the petitioner failed to establish that he entered into his marriage in good faith.

The petitioner, through counsel, submits a timely appeal and brief.

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 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(g) of the Act states:

Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act states:

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an

attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

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

(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 standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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.

\* \* \*

(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.

As it relates to marriages entered into while a petitioner is in proceedings, the regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

*Evidence to establish eligibility for the bona fide marriage exemption.* Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide . . . .

According to the evidence contained in the record, the petitioner entered the United States on or about March 1990 without inspection. The petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal on March 19, 2001. The petitioner's Form I-589 was rejected on September 14, 2001 and he was placed in removal proceedings. On June 14, 2002, the petitioner was given voluntary departure until August

13, 2002. The petitioner's subsequent appeal to the Board of Immigration Appeals (BIA) was dismissed on December 9, 2003. The BIA denied the petitioner's motion to reopen on March 15, 2004.<sup>1</sup>

In the interim, on March 4, 2003, the petitioner married N-R-<sup>2</sup>, a United States citizen, in Los Angeles, California. The petitioner filed the instant Form I-360 self-petition on October 4, 2004. With the filing of the petition, to support the claim that he entered into his marriage in good faith, the petitioner submitted a personal statement, a utility bill, a letter regarding a donation to the Archdiocese of Los Angeles, the petitioner's and his spouse's 2003 Wage and Tax Statements and photographs of an injury to the petitioner caused by his spouse.

The director found this evidence was insufficient to establish that he entered into his marriage in good faith and on August 22, 2005, requested the petitioner to submit further evidence. In his request for evidence the director properly notified the petitioner that because he married his spouse while he was in deportation proceedings, he must establish by clear and convincing evidence that he entered into his marriage in good faith. The petitioner responded to the request on October 21, 2005 and requested 60 additional days to respond to the request. On December 5, 2005, as it relates to his claim of a good faith marriage, the petitioner submitted five statements from acquaintances. The petitioner also resubmitted the utility bill, the donation letter, the 2003 Wage and Tax statements, and photographs that were submitted at the time of filing.

On March 20, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, indicating that the petitioner failed to establish, by clear and convincing evidence, that he married his spouse in good faith. In the NOID, the director questioned the authenticity of the utility bill submitted by the petitioner and determined that the petitioner's statement, the statements from his acquaintances and the remaining evidence did not demonstrate a good faith marriage.

The petitioner responded to the director's NOID on May 19, 2006. In her response to the director's NOID, counsel for the petitioner contests the director's finding that the utility bill was altered. Counsel also claims, "although the petitioner and his spouse did not commingle their finances, their marriage was entered into in good faith." To support her claim of the petitioner's good faith marriage, counsel refers to the fact that the petitioner and his spouse "received their mail at the same address" and the affidavits submitted on the petitioner's behalf. In his response to the NOID, the petitioner also submitted a lease for the apartment at 1019 E. 17<sup>th</sup> Street, the address claimed on the Form I-360, and the statement previously submitted by his spouse in support of the petitioner's motion to reopen before the BIA.

---

<sup>1</sup> While the record also contains a petitioner for review of the final order of deportation filed by the petitioner with the 9<sup>th</sup> Circuit Court of Appeals, the record does not contain evidence of the 9<sup>th</sup> Circuit's decision at the time of this decision.

<sup>2</sup> Name withheld to protect individual's identity.

After reviewing the evidence in the record, including the evidence submitted in response to the NOID, the director denied the petition on June 27, 2006, finding that the petitioner failed to provide clear and convincing evidence of his good faith marriage.<sup>3</sup>

On appeal, the petitioner asserts that the director's decision was "arbitrary and capricious" because he "minimized the importance of joint documents," did not give them proper weight and "incorrectly assumed that documents submitted were altered." Counsel then asserts that the petitioner submitted "substantial evidence" to establish the petitioner's good faith marriage, to include: a lease, a joint utility bill, photographs, a letter from the Archdiocese of Los Angeles, and statements from the petitioner's spouse and acquaintances. As will be discussed, after review of the record we concur with the finding of the director that the petitioner has failed to establish that he entered into his marriage in good faith, much less met the higher showing of clear and convincing evidence of his good faith marriage. The appellate brief and additional photographs submitted on appeal do not overcome the director's findings.

As it relates to the single utility bill submitted by the petitioner, counsel argues that the petitioner effectively rebutted the director's finding that the bill had been altered. Counsel refers to a June 15, 2006 letter from the City of Long Beach Department of Financial Management which verified that it "supplied and billed utility service to both the Petitioner and [his spouse] at their home address in 2004." While we do not dispute counsel's statement, the record does not contain this letter. Regardless, even if the record contained confirmation of this utility service for the one-month period claimed, this single utility bill does not establish that the petitioner entered into his marriage in good faith. Notably, the lease submitted by the petitioner indicates that the petitioner and his spouse entered into a month-to-month lease commencing on May 1, 2003. However, the record contains no other utility bills or an explanation for the lack of bills prior to the one submitted.

Counsel states that the petitioner and her spouse were "not able to commingle their finances as most couples do" and the fact that the petitioner and his spouse "were not financially stable enough to have joint bank accounts or insurance policies should not be the sole reason why the validity of the marriage is questioned." Counsel's statements regarding the lack of documentary evidence is not supported by the record. The petitioner does not provide any reason for the lack of evidence of commingled assets, nor does he make any assertion regarding their financial instability. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of [REDACTED]*, 17 I&N Dec. 503 (BIA 1980). We note that despite the submission of the petitioner's and his spouse's 2003 W-2 Wage and Tax Statements and a letter from the Archdiocese of Los Angeles indicating a \$30 contribution from the petitioner and his spouse in 2004, the petitioner failed to submit any evidence of the filing of joint taxes (or married filing separately) for either of those years. We further note that the affidavit submitted by [REDACTED] and [REDACTED] reference the petitioner's and his spouse's mobile home and car. However, the record contains no evidence or statement regarding the ownership or rental of the mobile home or car or any of the "bills" mentioned in [REDACTED] affidavit. Finally, while counsel takes issue with the fact that the director "minimized" the value of the lease, we note that the record lacks evidence of the monthly rental payments for this apartment, such as receipts or cancelled checks which demonstrate that the petitioner and his spouse shared in these payments.

---

<sup>3</sup> We note that although the director stated in the NOID that it appears that the petitioner married his spouse "merely to gain permanent resident status in the United States," the director made no explicit finding of fraud in his final decision.

The remaining evidence, which consists of photographs and affidavits, contains general statements that offer minimal probative value for determining the petitioner's good faith marriage. In his personal statement, the petitioner fails to provide any specific dates regarding his courtship with his spouse. Although he indicates that he met his spouse "in the 90's," he does not further discuss how he met his spouse, their courtship, wedding or any of their shared experiences, apart from the alleged abuse. Although the record also contains several affidavits from acquaintances of the petitioner, the affidavits do not provide any details regarding the petitioner's relationship, his intent in marrying his spouse, or any other details which establish that the petitioner entered into his marriage in good faith. For instance, the letter from [REDACTED] with whom the petitioner resided prior to his marriage with his spouse, indicated the following:

I went to Mexico for a couple of week on vacation when I got a call from my son. He told me [the petitioner] had gotten married and that his wife had moved into my house. I called [the petitioner] to confirm and told him we would talk about it when I got back. When I returned, I asked [the petitioner] about his new wife. He told me her name was [N-].

Clearly, [REDACTED] was unaware of the petitioner's relationship with his spouse prior to their marriage and did not even meet her until after they were already married, despite the fact that the petitioner was residing with [REDACTED]. The affidavit submitted by [REDACTED] indicates that he met the petitioner and his spouse after they were already married when they became neighbors. While [REDACTED] confirms that the petitioner resided with his spouse, his statement that they "were happy each time I saw them" and that they would clean their garage and sweep the sidewalk, is not sufficient to establish that they entered into the marriage in good faith. The remaining affidavits also confirm the petitioner's residence with his spouse, but provide only general details regarding the petitioner's good faith marriage. [REDACTED] a friend of the petitioner, indicates that a "[c]ouple of years ago [the petitioner] married a girl by the name [N-]" and that they were "very much in love." [REDACTED] provides no details about the petitioner's relationship with his spouse prior to their marriage or any other details which demonstrate how [REDACTED] arrived at his conclusion that they were "very much in love." We note that while [REDACTED] indicates that the petitioner met his spouse "through a mutual friend," the petitioner indicates that he met his spouse while "doing community help in a social center . . . ." The affidavit from [REDACTED] indicates that on one occasion she discussed future projects with the petitioner and his spouse. However, [REDACTED] offers no further details regarding their life together. Finally, the affidavit from [REDACTED] indicates that she saw the petitioner with a woman who was "blond, short, and a little chubby" every week. She does not identify the petitioner's spouse by name, provide any dates, or give any other details regarding their good faith marriage. While the contents of the affidavits support a finding that the petitioner and his spouse resided together, their residence does not de facto establish that they were engaged in a bona fide marital relationship. As previously cited, the provisions contained in section 204(a)(1)(A)(iii) require a petitioner to establish, among other requirements, that the petitioner resided with his spouse *and* that he entered into the marriage in good faith. The clause regarding a good faith marriage would be rendered meaningless if, once a petitioner has established residence with her spouse, she need not also establish that she entered into the marriage in good faith. Regarding the letter submitted by the petitioner's spouse in support of the petitioner motion before the BIA, counsel states that the letter is a "clear indication" of the petitioner's and his spouse's "intentions on creating a life together as husband and wife." While we do not dispute that the letter is evidence of the petitioner's spouse's intent in marrying the petitioner, it does not establish the petitioner's intent in marrying his spouse.

The four photographs submitted by the petitioner from his wedding day are not sufficient to establish his good faith intent in marrying his spouse. Despite the petitioner's claim that he has known his spouse for nearly a decade, all of the petitioner's photographs consist of photographs taken on their wedding day. While the petitioner submits additional photographs on appeal, he does not provide an explanation for his failure to provide this evidence prior to the director's denial. As noted above, on two occasions, the petitioner was given a reasonable opportunity to provide additional evidence before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. As such, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). Given the lack of documentary evidence of joint finances, taxes, utility bills, insurance or any other evidence of the commingling of assets and liabilities, and the absence of detailed testimonial evidence regarding the petitioner's intent at the time of his marriage, the petitioner has not sufficiently established, much less provided clear and convincing evidence, that he entered into his marriage in good faith, as required by sections 204(a)(1)(A)(iii)(I)(aa) and 204(g) of the Act.

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.