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U.S. Citizenship
and Immigration
Services

B9

FILE:

EAC 04 182 52040

Office: VERMONT SERVICE CENTER

Date: **MAY 23 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:

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.


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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of the Ivory Coast who entered the United States on January 22, 2000 as a nonimmigrant visitor (B-2). On August 19, 2001 the petitioner married [REDACTED], a U.S. citizen, in Las Vegas, Nevada. The petitioner filed this Form I-360 on May 29, 2004, seeking immigrant classification under section 204(a)(1)(A)(iii) of the Act as an alien subjected to battery or extreme cruelty by his U.S. citizen spouse.

On August 5, 2005 the director denied the petition because the record failed to establish the requisite battery or extreme cruelty, joint residence and good faith marriage.

On appeal, the petitioner submits an additional written statement. We concur with the director's determination that the present record does not establish the petitioner's eligibility and find that the petitioner's statements on appeal do not overcome the grounds for denial. Nonetheless, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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).

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

(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 . . . , 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 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.

* * *

(ii) *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 born in the United States, 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 evidence will be considered.

In this case, the director found the evidence submitted with the petition insufficient to establish the petitioner's eligibility and issued notices on June 9, 2004 and January 25, 2005 directing the petitioner to submit, *inter alia*, evidence that [REDACTED] battered or subjected him to extreme cruelty during his

marriage, that he resided with [REDACTED] and that he entered into marriage with her in good faith. The petitioner requested and was granted additional time to respond to the first notice and submitted additional documentation on December 2, 2004 and June 24, 2005.

Battery or Extreme Cruelty

As evidence of his wife's battery or extreme cruelty, the petitioner submitted a personal statement. In response to the director's January 25, 2005 notice advising him of the insufficiency of his statement and directing him to submit additional evidence of his wife's alleged battery or extreme cruelty, the petitioner submitted a copy of his personal statement and other documents irrelevant to this claim. We concur with the director's assessment that the petitioner's personal statement does not establish the requisite battery or extreme cruelty and we do not repeat the director's discussion here.

In his statement submitted on appeal, the petitioner repeats information conveyed in his first statement and adds that his wife tried to stab him with a kitchen knife on three occasions and once tried to pour hot water on him. The petitioner further states that in September 2001, the power was cut off due to his wife's failure to pay the bill and that he had to go to a friend's house for food. The petitioner reports that on several occasions, his wife did not come home for three to five days because she was doing drugs and drinking with friends. The petitioner explains that his wife left without telling him in October 2002, that he sold his furniture to survive and lived with a friend. The petitioner states that he feels stressed, has lost weight and is unable to sleep.

On appeal, the petitioner submits no evidence to corroborate his statement. The petitioner reports that he stayed at a friend's house the night his wife tried to pour hot water on him; that he had to go to his friend's house for food after the power was cut off from his home in September, 2001; and that he lived with a friend after his wife left him in October, 2002. Yet the petitioner submits no corroborative testimony from his friend or friends. The petitioner submits no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and he does not explain why such evidence does not exist or is unobtainable. [REDACTED] behavior, as described in the present record, does not rise to the level of battery or extreme cruelty as that term is described in the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi). Accordingly, the petitioner has not established his subjection to battery or extreme cruelty by his wife, as required by section 204(a)(1)(A)(iii) of the Act.

Entry Into the Marriage in Good Faith

The petitioner initially submitted no evidence of his good faith marriage to [REDACTED]. In response to the director's June 9, 2004 and January 25, 2005 notices, the petitioner submitted rent receipts made out to his wife individually; tax records and bills, most of which are dated after the couple's separation; and photographs of the couple's wedding. We concur with the director's determination that this evidence does not establish that the petitioner entered into marriage with [REDACTED] in good faith and do not repeat the director's discussion here.

In his statement submitted on appeal, the petitioner explains that he and [REDACTED] lived together, but his name was not on the lease. He states that the couple could not file any taxes together between 2001 and 2002 because he did not have work authorization or a social security number and because his wife was paid through a percentage of her tips. The petitioner provides no further details regarding how he met his wife, their courtship, wedding, shared residence, or any shared experiences apart from his wife's alleged abuse. The petitioner also fails to submit any further documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and does not explain why such evidence does not exist or is unobtainable. The present record thus fails to establish that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii) of the Act.

Joint Residence

The petitioner initially submitted no evidence of his residence with [REDACTED]. In response to the director's December 2, 2004 notice, the petitioner submitted rent receipts that do not state the year in which they were issued and that were made out to [REDACTED] alone. In response to the director's January 25, 2005 notice, the petitioner submitted the aforementioned tax records and bills. We concur with the director's determination that this evidence does not demonstrate that the petitioner resided with [REDACTED] and do not repeat his discussion here.

On appeal, the petitioner states that he lived with his wife, but that his name was not on the lease. He further explains, as mentioned above, why the couple could not file joint tax returns between 2001 and 2002. The petitioner does not further discuss his purported residence with his wife, does not submit any additional documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and does not explain why such documentation does not exist or is unobtainable. The present record thus does not demonstrate that the petitioner resided with [REDACTED] as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The present record does not establish that [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage, that the petitioner entered into marriage with [REDACTED] in good faith or that he resided with her. The petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

However, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.