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U.S. Citizenship
and Immigration
Services

B9



FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 24 2009

EAC 06 121 51943

IN RE:

Petitioner:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting 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 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 did not establish that he resided with his wife, that his wife subjected him to battery or extreme cruelty during their marriage, and that he married her in good faith.

On appeal, counsel submits a letter, additional evidence and copies of documents previously submitted.

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, 8 U.S.C. § 1154(a)(1)(J) 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.

* * *

(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 filed 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.

* * *

(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.

* * *

(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 Venezuela who was admitted into the United States on March 23, 1995 on a B1/B2 nonimmigrant visa. On March 7, 2003, the petitioner married E-S-¹, a U.S. citizen, in Manhattan, New York. E-S- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied due to abandonment on March 17, 2006, along with a concurrently filed Form I-485, Application to Register Permanent Resident or Adjust Status.

The petitioner filed the instant Form I-360 on March 16, 2006. On August 4, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residency, battery or extreme cruelty, and good-faith entry into the marriage. The petitioner, through counsel, requested additional time to respond. On November 20, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite joint residency, battery or extreme cruelty, and good-faith entry into the marriage. The petitioner, through counsel, timely responded to the NOID with additional evidence. On February 27, 2007, the director denied the petition on the three aforementioned grounds. The petitioner timely appealed.

On appeal, counsel states that the petitioner has demonstrated that the marriage was entered in good faith and that the petitioner was the subject of extreme cruelty. Counsel does not address the director's finding that the petitioner did not establish that he resided with his wife. Counsel submits previously submitted documentation and the following new supporting documentation: a letter dated March 13, 2007 from [REDACTED], stating that the petitioner attends an outpatient mental health clinic because he suffers from Adjustment Disorder with Depressed Mood; a Violation of Court Order, dated December 19, 2006, in the petitioner's Matter of a Custody/Visitation Proceeding, summoning the petitioner's spouse to court for failing to obey a court order, and corresponding documents; and a Domestic Incident Report, dated August 26, 2006, with the petitioner named as the complainant and his spouse as the offender, reflecting no offense committed and the case closed. Counsel's claims and the evidence submitted on appeal fail to establish that the petitioner resided with his wife, that his wife subjected him to battery or extreme cruelty during their marriage, and that he married her in good faith.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that he resided with his wife:

- The petitioner's affidavit dated March 11, 2006;

¹ Name withheld to protect identity.

- The petitioner's Form G-325A, Biographic Information, on which he stated that he resided in an apartment at [REDACTED] in Brooklyn, New York from July 2002 until the date the form was signed, August 12, 2003;

Copy of a letter dated March 10, 2006, from "owner" [REDACTED] stating that the petitioner's spouse resided with the petitioner at [REDACTED] in Brooklyn, New York from early July 2002 until August 2003;

- Copies of four Verizon bills addressed to the petitioner at the "[REDACTED]" address in Brooklyn, New York, dated September 10 to December 10, 2003, with the petitioner's spouse's name appearing at the top of the bill; a copy of a Verizon bill, dated August 10, 2003, addressed to the petitioner's spouse at the "[REDACTED]" address in Brooklyn, New York, and six partial Verizon bills addressed to the petitioner's spouse at the "[REDACTED]" address in Brooklyn, New York, dated March 10 through August 9, 2003; and
- Copies of four T-Mobile bills addressed to the petitioner at the "[REDACTED]" address in Brooklyn, New York, dated May 16, 2003, July 16, 2003, August 16, 2003, and September 16, 2003, respectively.

On the Form I-360, the petitioner stated that he resided with his wife from July 2002 until August 2003. As noted by the director in her November 20, 2006 NOID and February 27, 2007 denial, the documentation submitted by the petitioner to establish joint residency is insufficient. Specifically, the Verizon and T-Mobile bills that fall within the time period of the claimed joint residence are not addressed to both the petitioner and his spouse. In addition, the March 10, 2006 letter from "owner" [REDACTED] stating that the petitioner's spouse resided with the petitioner at [REDACTED] in Brooklyn, New York from early July 2002 until August 2003, is not corroborated with any primary evidence, such as a lease agreement reflecting both the names of the petitioner and his spouse. The record does not contain any primary evidence listing the names of the petitioner and his spouse jointly, such as joint leases, mortgages, or rental agreements, insurance policies, utility invoices, bank statements, tax records, and financial documents.

As stated above, the petitioner, through counsel, does not address this issue on appeal. Upon review of the record in its entirety, the relevant evidence remains insufficient regarding the petitioner's alleged residence with his wife. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's affidavit dated March 11, 2006;

- A letter dated March 13, 2006, from [REDACTED], stating that the petitioner was seen on the following dates for psychotherapy: 11/11/05; 11/18/05; 12/02/05; 12/26/05; 1/20/06; 2/15/06; and 3/13/06;
- A letter dated March 15, 2006 from [REDACTED] a Domestic Violence Services Coordinator, of the Outreach Project Greenpoint in Brooklyn, New York, stating that, upon her recommendation, the petitioner attended eight one-hour individual sessions as a male victim;
- A Domestic Incident Report dated August 26, 2006, with the petitioner named as the complainant and his spouse as the offender, reflecting no offense committed and the case closed;
- An affidavit from [REDACTED] dated November 27, 2006, describing the petitioner's wife as very controlling, possessive, and not friendly or responsive; and

A letter dated March 13, 2007 from [REDACTED], stating that the petitioner attends an outpatient mental health clinic because he suffers from Adjustment Disorder with Depressed Mood.

in his March 11, 2006 affidavit, the petitioner stated that he met his future spouse in the spring of 1999, that in July 2002, she began to live with him in his apartment, that in November 2002, she became pregnant, and that on March 7, 2003, they were married. The petitioner explains that his daughter was born on June 9, 2003, that he was working two jobs, and that his wife became resentful, argumentative, and violent because of the long hours he worked "out of the house." The petitioner states that on one occasion, his wife attempted to slap him but missed, that on another occasion, she grabbed his face and scratched it, and that on other occasions, she tore up a money order and threatened to throw away his camera and clothes. The petitioner further explains that his wife was controlling and would not allow him to spend time with his friends and that she insulted him by calling him obscene names. The petitioner states that she also threatened not to continue petitioning for him unless he paid for their child's daycare and that in August 2003, his wife and daughter moved out of his apartment. The petitioner also reports that his wife uses their daughter as weapon against him, that she interferes with his visitation, and that he has sought psychotherapy, as a result.

In her November 27, 2006 affidavit, [REDACTED] states that she met the petitioner's spouse several years ago at a birthday party and that her first impression was that the petitioner's wife was very controlling and possessive and that she was not friendly or responsive.

The petitioner submits insufficient evidence that his wife subjected him to battery. The alleged incident of the petitioner's wife grabbing his face and scratching it is equivocal and the petitioner has

not established that her other, nonviolent actions were part of an overall pattern of violence. Moreover, counsel asserts on appeal that the petitioner was the subject of extreme cruelty. He does not assert that the petitioner was the subject of battery. Accordingly, we will discuss only the petitioner's claim of extreme cruelty. The petitioner's testimony does not indicate that his wife's behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not describe in probative detail any particular incidents where his wife threatened him with physical or mental injury. The petitioner's statements regarding his wife tearing up a money order, threatening to throw away his camera and clothes, not allowing him to spend time with his friends, calling him obscene names, and threatening not to continue her immigration petition for him if he did not pay for their child's daycare, do not establish that his wife subjected him to psychological, sexual abuse or exploitation, or that her actions were part of an overall pattern of violence.

The letters from [REDACTED], Domestic Violence Services Coordinator, [REDACTED], and [REDACTED], also fail to establish that the petitioner's wife subjected him to extreme cruelty. Dr. [REDACTED], who stated that the petitioner attends an outpatient mental health clinic because he suffers from Adjustment Disorder with Depressed Mood, did not identify the underlying disorder and depression, or provide any information indicating that the alleged abuse by the petitioner's wife was a causative or contributing factor in his mental health condition. Dr. [REDACTED] did not specifically indicate that he treated or recommended any treatment for the petitioner.

[REDACTED], a Domestic Violence Services Coordinator, of the Outreach Project Greenpoint in Brooklyn, New York, who states that she recommended that the petitioner attended eight one-hour individual sessions as a male victim, provides no information or discussion of such sessions or offer any direct correlation between the petitioner's counseling and the alleged abuse by the petitioner's spouse.

In like manner, [REDACTED] provides the dates of the petitioner's psychotherapy sessions, but does not provide any information or discussion of such sessions or offer any direct correlation between the petitioner's counseling and the alleged abuse by the petitioner's spouse.

Nor do the Domestic Incident Report, which reflects no offense committed and case closed, the court summons pertaining to child custody and visitation issues, and the affidavit from Filomena Andre, describing the petitioner's wife as very controlling, possessive, and not friendly or responsive, establish that the petitioner's wife subjected him to extreme cruelty during their marriage.

The record does not indicate that the petitioner's wife subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner's wife subjected him to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

We affirm the director's determination that the petitioner did not establish that he married his spouse in good faith. As discussed above, the petitioner stated in his March 11, 2006 affidavit that he met his future spouse in the spring of 1999, that in July 2002, she moved into his apartment, that in November 2002, she became pregnant, that on March 7, 2003, they were married, that their daughter was born on June 9, 2003, and that in August 2003, his wife and daughter moved out of his apartment.

Other than the birth certificate for his daughter and related photographs, the petitioner did not submit any of the other evidence requested by the director in her NOID to prove a good-faith marriage, including: insurance policies; bank statements; tax records; joint ownership of property; and affidavits of friends and family verifying the petitioner's relationship with his spouse.

The petitioner claims that he and his wife lived together in his apartment from July 2002 until August 2003. However, as discussed in the preceding section, the record contains only intermittent joint documentation. The petitioner does not submit any explanation for not submitting the required documentation, such as insurance policies, bank statements, tax records, joint ownership of property and/or rental agreements, and affidavits of friends and family verifying the petitioner's relationship with his spouse.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the lack of probative detail and substantive information in the petitioner's testimony regarding the petitioner and his spouse's shared residence and experiences, significantly detracts from the credibility of his claim. It is also noted that neither of the affiants provides detailed, probative testimony regarding the petitioner's allegedly good-faith entry into the marriage. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has not demonstrated that he resided with his wife, that he entered into their marriage in good faith and that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, 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.