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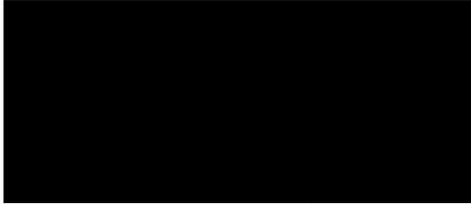
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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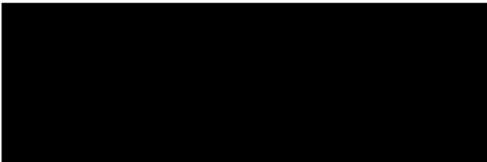
Office: VERMONT SERVICE CENTER

Date: JAN 20 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Jerry Rhew

Chief, Administrative Appeals Office

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

The petitioner seeks immigrant classification 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 an alien battered or subjected to extreme cruelty by his United States citizen spouse.

On July 22, 2010, the director denied the petition, determining that the petitioner had not established he had jointly resided with his United States citizen spouse during the marriage and had not established that he entered into the marriage in good faith. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, and additional documents.

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 based on his or her relationship to the abusive spouse, 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 explained 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.

* * *

(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 set forth

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.

* * *

(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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Gambia. He entered the United States on or about December 16, 2005 as a visitor. On December 18, 2008, the petitioner married A-C-¹, the claimed abusive United States citizen. On August 11, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On January 27, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had jointly resided with A-C- and that he had not established that he had entered into the marriage in good faith. Counsel for the petitioner timely submits an appeal and additional evidence.

Residence

The petitioner in this matter indicates on the Form I-360 that he jointly resided with A-C- from January 2008 to June 2009. The petitioner initially did not submit any evidence demonstrating his joint residence with A-C-. In response to the director's RFE, the petitioner provided a copy of a MetLife Insurance application and copies of magazine statements and magazine covers addressed to

¹ Name withheld to protect the individual's identity.

the couple. The director determined that the [REDACTED] application was insufficient to establish joint residence as it was filled out and signed by the petitioner with no evidence that it had ever been submitted. The director also found that the magazine statements and covers, although addressed to the couple, were insufficient to establish that the couple jointly resided together.

On appeal counsel asserts that because A-C- received mail at the petitioner's residence, utility bills list A-C- as a resident of the house, and the petitioner and his friends declare that the couple resided together, the petitioner has offered proof that the petitioner and A-C- were residing together in the petitioner's home. Counsel does not explain why the petitioner failed to submit the following additional documents to the director in response to the RFE. The additional documents include:

- The petitioner's personal statement;
- Affidavits signed by [REDACTED];
- An August 16, 2010 deposit account balance summary showing the petitioner as the sole owner of an account opened May 30, 2007 and listing A-C- as the beneficiary;
- Photocopies of a Blue Cross Blue Shield insurance card for the petitioner and A-C-;
- ConEdison utility bills for March 2010 to July 2010 listing the petitioner and A-C- as account holders; and
- Photographs of the couple on a single occasion.

In the petitioner's personal statement on appeal he declared that immediately following their wedding (December 18, 2008) A-C- moved into his apartment and that he paid all the bills directly because she did not work. The petitioner does not provide further testimony regarding the claimed joint residence. Additionally, the petitioner's statement on appeal is inconsistent with the information he provided on the Form I-360 when he declared that he and A-C- resided together from January 2008 to June 2009. In the affidavit of [REDACTED] declares that A-C- moved in with the petitioner after their marriage and he remembers seeing her at the petitioner's house. In the affidavit of [REDACTED] declares that the couple moved in together after they were married and that he saw A-C- at the petitioner's house when he came to visit. In the affidavit of [REDACTED] declares when the petitioner and A-C- married they moved in together and that he saw A-C- at the house most weekends when he visited the petitioner. These statements are also inconsistent with the petitioner's statement on the Form I-360 regarding the beginning of the couple's alleged joint residence.

In addition to the inconsistencies, neither the petitioner's testimony nor the testimony of his friends provides probative information regarding the couple's claimed joint residence. The petitioner does not describe their home furnishings, their neighbors, any of their jointly-owned belongings, or any of their daily routines within the residence. The affiants who submitted statements on the petitioner's behalf also fail to describe the petitioner's claimed joint residence, when or for how long they visited the couple, or the couple's routines they witnessed during their visits. The record lacks probative testimony establishing that the couple jointly resided together during their marriage.

Upon review of the documentary evidence submitted, the August 16, 2010 deposit account balance summary does not indicate when A-C- was added as a beneficiary and whether this occurred during

the time period of the claimed joint residence. The photocopies of the Blue Cross Blue Shield insurance card do not include an address and the accompanying photocopy of a statement shows that the cards were sent to the petitioner at his address and does not reference A-C-. The [REDACTED] [REDACTED] are for services subsequent to the time period the couple allegedly resided together so do not offer any probative information relating to the couple's claimed joint residence. The photographs of the couple do not include any information regarding the couple's claimed joint residence. As the director previously observed, receiving mail at a particular address is insufficient to establish that the individual resided at the address.

Upon review of the totality of the evidence in the record, including the petitioner's testimony and the testimony submitted on his behalf, the petitioner has failed to establish that he jointly resided with A-C- during the marriage. The record lacks consistent, detailed information regarding the petitioner and A-C-'s alleged joint residence.

Good Faith

The petitioner initially did not provide a statement or evidence regarding his intent in entering into the marriage. In response to the director's RFE, the petitioner provided the affidavits of [REDACTED]. As the director observed, the affiants did not provide any detail regarding the petitioner's intent in entering into the marriage.

On appeal, counsel for the petitioner asserts that the timing of the petitioner's courtship, the celebration of their wedding, the fact that the couple moved in together, and the nature of their post-marriage relationship demonstrates that the couple married with the intent to establish a life together. Counsel does not explain why the petitioner failed to submit the following additional information and documents to the director in response to the RFE. The additional documents include:

- The petitioner's personal statement;
- Affidavits signed by [REDACTED];
- An August 16, 2010 deposit account balance summary showing the petitioner as the sole owner of an account opened May 30, 2007 and listing A-C- as the beneficiary;
- Photocopies of a Blue Cross Blue Shield insurance card for the petitioner and A-C-;
- ConEdison utility bills for March 2010 to July 2010 listing the petitioner and A-C- as account holders; and
- Photographs of the couple on a single occasion.

The petitioner provides a cursory description of how he met A-C- and other than indicating that on their first date they went to a Latin American restaurant, fails to describe in probative detail any of their interactions prior to their marriage. Although the petitioner references a large catered party with 40 to 50 guests at his house to celebrate his wedding, he does not provide any documentary indicia of this event. In the affidavit of [REDACTED] declares that he is the petitioner's close friend and neighbor, that he socialized with the petitioner frequently, and noted that the petitioner was always taking A-C- out and called to check on her

when the petitioner was out with him. [REDACTED] adds that he attended the wedding, was a witness, and the petitioner seemed very happy. In the affidavit of [REDACTED] declares that he spends almost every weekend with the petitioner, that the petitioner introduced him to A-C-, and that the petitioner reported that he was in love with A-C-. In the affidavit of [REDACTED] declares that he socialized with the petitioner frequently and spends most weekends with the petitioner having dinner and talking with a group of friends. [REDACTED] notes that the petitioner told him that he loved A-C- and seemed happy with his decision to marry her. The affiants do not describe any particular incidents where they witnessed the alleged bona fides of the petitioner's marital relationship. Although the affiants state that they knew the petitioner and socialized with him frequently, they do not indicate when and for how long they socialized with the petitioner and whether the socialization included A-C-. They provide no probative details regarding observations of the petitioner's alleged good faith intent in entering into the marriage.

The additional documentation the petitioner provides on appeal also fails to establish that the petitioner intended to establish a life together with A-C- when entering into the marriage. The August 16, 2010 deposit account summary is not accompanied by any evidence that the petitioner or A-C- used the account throughout their marriage. The photocopies of the insurance card are insufficient to establish the petitioner's intent in entering into the marriage. As noted above, the utility bills are for dates subsequent to A-C-'s leaving the alleged joint residence and the photographs are of the couple on a single occasion.

As counsel noted, the key factor in determining whether a petitioner 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 the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter the petitioner has not set forth his intent in probative detail in his statement to United States Citizenship and Immigration Services (USCIS). In addition, the affiants' statements, submitted on behalf of the petitioner, do not disclose the circumstances or specific events witnessed that assist in establishing the petitioner's intent in entering into the marriage. Neither has the petitioner provided other evidence that would demonstrate that his intent in entering into the marriage was in good faith. Upon review of the petitioner's statement and the totality of the record, the record is bare of the essential detail necessary to demonstrate that the petitioner's intent to enter into the marriage was in good faith. The petitioner's marriage certificate confirms the marital relationship, but does not establish the petitioner's own good faith in entering into the marriage. The record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with A-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied and the appeal dismissed for the above stated reasons. 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. Here that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.