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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED]
EAC 03 089 53258

Office: VERMONT SERVICE CENTER

Date: JUN 22 2015

IN RE: Petitioner: [REDACTED]
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:

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a 35-year old male native and citizen of Venezuela 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 the petitioner failed to establish that he entered into the marriage in good faith.

The petitioner submits a timely appeal with additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, 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.

Further, the regulation at 8 C.F.R. § 204.2(c)(1)(i) also requires the petitioner to show that he entered into the marriage to the citizen in good faith.

According to the evidence in the record, the petitioner wed United States citizen [REDACTED] in Manhattan, New York on August 10, 2001. On October 2, 2001, the petitioner's spouse filed a Form I-130 petition in the petitioner's behalf. The petition remains pending. On January 2, 2003, the instant petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse during their marriage. The petitioner claims to have resided with his spouse from August 2001 until July 2002. The petitioner and his spouse were divorced on November 6, 2002.

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

Because the petitioner furnished insufficient evidence to establish his eligibility, on November 6, 2003, the director requested the petitioner to submit additional evidence. The director listed evidence the petitioner could submit to establish that he is a person of good moral character and that he has been battered or the subject of extreme cruelty perpetrated by his citizen spouse. As it relates to the petitioner's good faith marriage, the director indicated the petitioner could submit one or more of the following documents:

- Insurance policies in which the petitioner or her spouse are named as beneficiary.
- Bank statements, joint tax records, apartment leases, bills, and other documents that show the petitioner and her spouse share accounts and other similar responsibilities.
- Evidence of the petitioner's courtship, wedding ceremony, residences, special events, etc.
- Evidence of joint ownership of property (such as a home, automobile, etc.).
- Birth certificates of children born to the petitioner and his spouse.
- Affidavits of friends and family who can provide specific information verifying the petitioner's relationship with his spouse.

The petitioner responded to the director's request on December 29, 2003 by submitting the following documents:

- A report from a licensed psychotherapist.
- A Good Conduct Certificate from the City of New York Police Department.
- Three affidavits from relatives and acquaintances describing incidents of abuse inflicted on the petitioner by his spouse.
- A letter from the Hispanic Aids Forum, Inc.
- A letter from the petitioner's current employer.

- A letter from the Hotel, Restaurant and Club Employees and Bartenders Union indicating that the petitioner has been a member of [REDACTED] since July 2001.

The petitioner also requested more time to “collect and submit other affidavits related to the battered spouse claim.”

On January 2, 2004, the petitioner submitted two additional affidavits from friends documenting the abuse the petitioner was subjected to by his citizen spouse.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the request for additional evidence. The discussion will not be repeated here.

On appeal, the petitioner submits documentation related to the issue of his good faith marriage as previously requested by the director. The documentation includes:

- Four affidavits from relatives and acquaintances describing, in general, the petitioner’s courtship and marriage to his spouse.
- A voter registration document issued to the petitioner’s spouse.
- A statement from the petitioner indicating that statements from [REDACTED] are not available because his “ex-wife took them.”
- Copies of the petitioner’s and spouses Fleet credit cards and account printout.
- A lease agreement for the petitioner from February 2001 to January 2002.
- A lease agreement for the petitioner and his spouse from February 2002 to January 2003.
- A letter from the petitioner’s landlord indicating the removal of the petitioner’s spouse from the lease on June 15, 2002.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In her request for further evidence, the director noted the deficiencies in the record and specifically listed the evidence to be submitted to support the petitioner’s claims. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director’s request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

In review, we find the evidence contained in the record at the time of the director’s decision was not sufficient to demonstrate eligibility. The evidence related to whether the petitioner entered into his marriage in good faith consists of his marriage certificate and affidavits from acquaintances and relatives. As the affidavits

appear to be written to document the purported abuse suffered by the petitioner and fail to document the specific details of the petitioner's marriage, we do not find the affidavits support a finding that the petitioner entered into the marriage in good faith. Further, the fact that a marriage certificate was issued is not adequate evidence that the petitioner's marriage was entered into in good faith.

The record lacks evidence of insurance policies in which the petitioner or his spouse is named as the beneficiary, or bank statements or other documents that show he shared accounts and other responsibilities with his spouse. The petitioner failed to submit evidence of joint ownership or rental of property. No children were born of the marriage. Despite the petitioner's claim that he resided with his spouse for approximately one year, there is no evidence to establish the commingling of assets and joint financial liabilities, or other objective evidence to indicate that the petitioner and his spouse intended to establish a life together in good faith.

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.