

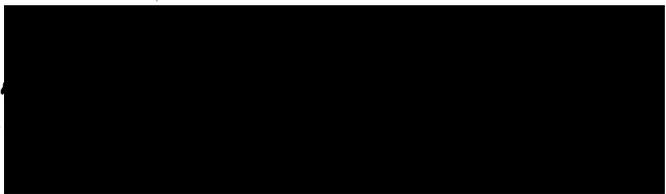
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 25 2005
EAC 02 014 50561

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:
[REDACTED]

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of Colombia 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.

On December 1, 2003, the director denied the petition, finding that the petitioner failed to establish that he has resided with the U.S. citizen spouse, has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse, is a person of good moral character, and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a statement and photograph and resubmits evidence previously provided to Citizenship and Immigration Services (CIS).

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his 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.

The first issue to be addressed is whether the petitioner established that he resided with his citizen spouse. According to the evidence on the record, the petitioner wed U.S. citizen [REDACTED] on October 15, 1999 in New York City, New York. On January 10, 2000, [REDACTED] filed a Form I-130 petition on the petitioner's behalf. On October 4, 2001, the petitioner filed a self-petition, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage. The Form I-130 petition was denied on January 26, 2002 due to abandonment.

The director denied the instant Form I-360 petition, in part, finding that the evidence was insufficient to establish that the petitioner had resided with his citizen spouse. On the Form I-360, the petitioner indicated that he had resided with his U.S. citizen spouse from August 1999 until June 2001. Because the director determined that the petitioner had failed to submit sufficient evidence to establish that he had resided with his spouse, the director requested that he submit additional evidence (RFE). The petitioner requested an additional 60 days to respond to the RFE. The director granted the request for the extension. The director listed the types of evidence the petitioner could submit to establish that he had resided with his spouse. In review, the evidence is insufficient to establish that the petitioner resided with his spouse during the marriage. The petitioner submitted bills, correspondence, bank statements, a paycheck stub, federal tax returns, and requests for money orders. The majority of this documentation is dated after the parties separated. The evidence is inconsistent as to when the parties lived where. The bank statements dated March 2001 through June 25, 2001 show the petitioner and his wife resided at [REDACTED] k. A letter from ConEdison dated June 1, 2001 is addressed to the petitioner and his wife at [REDACTED] New York. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence is insufficient to establish that the petitioner resided with his citizen spouse during their marriage.

The second issue to be addressed in this proceeding is whether the petitioner established that he has been battered by or has been the subject of extreme cruelty perpetrated by his citizen spouse. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he 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. The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

Because the petitioner furnished insufficient evidence to establish that he has been battered by, or the subject of extreme cruelty by his U.S. citizen spouse, the director requested that he submit additional evidence.

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

The evidence relating to the abuse consists of two letters from counsel for the petitioner. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director requested that the petitioner submit additional evidence to establish that he had been abused or subjected to extreme cruelty by his spouse in an RFE. In response to the RFE, the petitioner submitted no additional evidence. He failed to submit his own statement describing the purported abuse. The evidence is insufficient to establish that the petitioner has been battered by, or the subject of extreme mental cruelty by his citizen spouse.

The third issue to be addressed in this proceeding is whether the petitioner established that he entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H).

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

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.

In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married his wife in good faith. The petitioner provided CIS with copies of federal tax returns for 1999 and 2000 and a letter of verification of a joint bank account opened January 1, 2001, photographs, various bills and letters. Much of the documentation post-dates the petitioner and his wife's separation date. Photographs are not persuasive evidence of the bona fides of the marriage. The petitioner failed to submit his own statement describing his courtship and marriage. He failed to submit affidavits of friends and family providing specific information verifying his relationship with his spouse. He did not submit evidence of joint ownership of property. No children were born of the marriage. In review, the evidence is insufficient to establish that the petitioner wed his husband in good faith.

The final issue to be addressed is whether the petitioner established that he is a person of good moral character as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(F). In a request for additional evidence, the director specifically requested that the petitioner submit police clearances or records from each place he had resided for at least six months during the 3-year period before filing the Form I-360 petition. The petitioner submitted a criminal history from the Snellville Police Department indicating that he had been convicted of fleeing/attempting to elude an officer on April 21, 1999 in Georgia. According to the evidence on the record, the petitioner has the following criminal record:

The petitioner was arrested on December 8, 1998 by the Gwinnet County, Georgia, Sheriff's Office. On April 21, 1999, he was convicted of fleeing/attempting to elude an officer (Docket Number [REDACTED]) He was fined \$625.

The petitioner failed to provide any clearances from the State of New York where he said he had resided with his spouse from August 1999 until June 2001. The evidence is insufficient to establish that the petitioner is a person of good moral character.

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.