

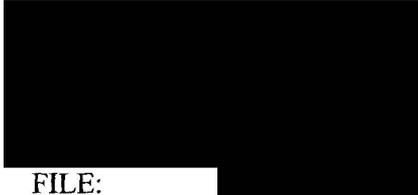
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U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 05 234 50652

Office: VERMONT SERVICE CENTER

Date: **DEC 2**

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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner seeks immigrant classification as a special immigrant pursuant to 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 record did not establish that the petitioner has a qualifying relationship as the spouse of a United States citizen, that he is eligible for classification based on that qualifying relationship, that he resided with his spouse, that he was battered by or subjected to extreme cruelty by his spouse, and that he entered into his marriage in good faith.

The petitioner submits a timely appeal.

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:

(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 . . . , 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) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

(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.

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(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 petitioner is a native and citizen of the Dominican Republic. According to the evidence contained in the record, the petitioner last entered the United States on January 5, 1998, without inspection. On August 25, 1993, the petitioner married C-R-<sup>1</sup>, a United States citizen, in Bronx, New York. On November 12, 1993, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petition was initially approved on March 17, 1994, but subsequently revoked on September 5, 1997. A second Form I-130

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<sup>1</sup> Name withheld to protect individual's identity.

filed on the petitioner's behalf by his spouse was approved on February 19, 2002. The petitioner filed the instant Form I-360 self-petition on August 22, 2005.

After conducting a preliminary review of the evidence submitted at the time of filing, the director found that the petitioner had failed to establish his prima facie eligibility<sup>2</sup> and on August 29, 2005, requested the petitioner to submit further evidence to establish that he resided with his spouse, that he was battered by or subjected to extreme cruelty by his spouse, and that he entered into his marriage in good faith. The petitioner responded to the director's request on November 15, 2005 and requested additional time in which to submit the requested evidence.

On November 28, 2005, the director issued a Request for Evidence (RFE) for further evidence of the claimed abuse, that he married his spouse in good faith, and that he resided with his spouse.<sup>3</sup> The petitioner responded to the director's RFE on December 30, 2005.

On March 3, 2006, the director issued a notice of intent to deny (NOID) to the petitioner, indicating that the evidence was not sufficient to establish that the petitioner has a qualifying relationship as the spouse of a United States citizen and that he is eligible for classification based upon that qualifying relationship. Specifically, the director noted that the psychological assessment submitted by the petitioner indicated that he was currently divorced and requested the petitioner to submit evidence of the legal termination of his marriage to his citizen spouse. In addition, the director determined that the testimonial and documentary evidence submitted by the petitioner contained inconsistencies and was also insufficient to establish that the petitioner resided with his spouse and that he entered into his marriage in good faith. Finally, the director indicated that the record was not sufficient to establish a claim of abuse.

The petitioner failed to respond to the director's NOID and the director denied the petition on July 7, 2006. The petitioner submits a timely appeal with additional evidence of two subsequent visits to his psychotherapist. Upon review, as will be discussed, we concur with the determination of the director and find the petitioner's appeal is not sufficient to overcome the director's grounds for denial.

*Qualifying Relationship and Eligibility for Immediate Relative Classification*

On the Form I-360, the petitioner indicated that he was married at the time of filing. However, in the psychological assessment, dated September 27, 2005, Irene Torres, LCSW-R, indicated the petitioner's marital status as "divorced." In the director's NOID, the petitioner was afforded an opportunity to either submit evidence to confirm that his marriage to his citizen spouse was terminated or to provide an explanation

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<sup>2</sup> The determination of prima facie eligibility is made for the purposes of 8 U.S.C. § 1641, as amended by section 501 of Public Law 104-208. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition, does not establish eligibility for the underlying petition, is not considered evidence in support of the petition, and is not construed to make a determination of the credibility or probative value of any evidence submitted along with that petition.

<sup>3</sup> The record also contains RFEs dated October 31, 2005 and November 15, 2005, respectively. However, as those RFEs were sent to the petitioner at a previous address, the director reissued the RFE on November 28, 2005.

for the misinformation contained in the psychological assessment. However, the petitioner failed to respond to the NOID. Accordingly, the director properly concluded that the petitioner failed to establish that he had a qualifying relationship as the spouse of a United States citizen and that he was eligible for classification based upon that relationship.

On appeal, the petitioner claims that there has been no legal dissolution of his marriage but provides no explanation for why his psychological assessment indicated that he was divorced. Although the petitioner submits two additional treatment summaries from [REDACTED], the summaries do not provide any explanation as to why it was previously indicated that the petitioner was divorced. In the summary dated March 15, 2006, submitted on appeal, [REDACTED] states:

The patient reports he has received a letter from INS requesting clarification of his marital status and psychotherapeutic treatment. His initial assessment incorrectly indicated that he was divorced and issue [sic] needs clarification. The patient reports he and his wife separated in 1999, but continued to sporadically be together until 2004, when they finally ended the relationship.

fails to indicate whether she mistakenly inferred from the petitioner's statements that he was divorced or whether the petitioner actually indicated that he was divorced. The mere acknowledgment that the initial assessment was incorrect is not sufficient to explain the discrepant fact. Given the inconsistent testimonial evidence regarding the petitioner's marital status and the lack of any specific explanation for the basis of the purported error, the petitioner has failed to overcome the director's findings on appeal. The petitioner has failed to establish that he has a qualifying relationship as the spouse of a United States citizen and that he is eligible for classification based upon that relationship.

*Evidence that the petitioner has resided with his citizen spouse*

On the Form I-360, the petitioner indicated that he resided with his spouse from 1993 until 2004 and that he last resided with his spouse at [REDACTED]. This claim is contradicted by other testimonial evidence contained in the record. First, the psychological assessment indicates that "after several periods of separations and reconciliations [the petitioner and his spouse] separated in 1999." Second, the affidavit from [REDACTED] indicates that the petitioner and his spouse resided together until January 2005, when the petitioner "had to move out of the home because their marital relationship was not longer [sic] working."

The sole documentary evidence of the petitioner's claimed residence with his spouse consisted of two documents from the Internal Revenue Service (IRS), dated December 15, 2000 and March 19, 2001, respectively. Despite the director's reference in the NOID to the discrepancies and lack of evidence related to a joint residence, the petitioner failed to provide any further evidence in response to the NOID. Based upon the inconsistent testimonial evidence and the lack of documentary evidence such as a lease, utility bills, or other correspondence, we concur with the finding of the director that the petitioner failed to establish that he resided with his spouse.

On appeal, the petitioner fails to provide any personal statement clarifying the dates of his residence with his spouse or to address the conflicting statements from [REDACTED]. While the petitioner does submit a treatment summary from [REDACTED] dated March 15, 2006, [REDACTED] states generally:

The patient reports he and his wife separated in 1999, but continued to sporadically be together until 2004, when they finally ended the relationship.

This new summary fails to provide an explanation for why it was previously indicated that “after several periods of separations and reconciliations they separated in 1999.” It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the petitioner failed to provide an explanation for the inconsistencies contained in the record and did not provide any further documentary evidence to overcome the director’s findings. Consequently, the petitioner has failed to establish that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

With the initial filing, the petitioner failed to submit any evidence in reference to a claim of abuse, including his own personal statement describing the purported abuse. In response to the director’s RFE, the petitioner submitted a psychological assessment and two affidavits. The psychological assessment, based upon a single session with the petitioner, indicates that the petitioner sought counseling to deal with feelings of depression over his “uncertain immigration status” and his “dysfunctional marriage.” The evaluation states that the petitioner’s spouse became “sexually insatiable” and would “verbally emasculate” the petitioner. The evaluation, however, does not describe any specific incident of sexual or verbal abuse. Similarly, while the affidavit from [REDACTED] indicates that the petitioner’s spouse was “verbally aggressive,” she describes only a single instance where she witnessed the petitioner’s spouse insulting the petitioner with “dishonoring words.” The affidavit from [REDACTED] indicates that the petitioner’s spouse was “disrespectful and verbally abusive” and “uncontrollable,” however, [REDACTED] fails to describe any specific incident in detail.

In the NOID, the director noted the insufficiency of the evidence submitted by the petitioner and also indicated that the discrepancies contained the psychological evaluation diminished its probative value. The petitioner failed to provide any further evidence of abuse or to address the inconsistencies noted by the director in response to the NOID. Accordingly, we concur with the finding of the director that at the time of his decision, the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse.

On appeal, the petitioner states generally that his spouse was “very aggressive abusive (language) and physically threatening my welfare, mental, emotional and personal [sic] when sharing the same room.” However, he provides no statement addressing specific instances of the claimed abuse and fails to provide any further statements from his acquaintances elaborating on their discussions of the petitioner’s spouse’s treatment of the petitioner. Similarly, the treatment summaries evidencing additional therapy sessions with Irene Torres on appeal provide no further details regarding the claimed abuse. Accordingly, we find that the petitioner has failed to overcome the findings of the director on appeal. The petitioner has failed to establish that he was battered, that he was threatened with violence, or that his spouse’s nonviolent actions were psychologically abusive or part of an overall pattern of abuse. Consequently, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Good Faith Marriage*

With the initial filing, the petitioner failed to submit any evidence, either testimonial or documentary, of his good faith marriage. In response to the director's RFE, the petitioner submitted two documents from the IRS addressed to the petitioner and his spouse. The first document shows that the petitioner and his spouse owed money to the IRS, while the second document showed a \$48 refund to the petitioner and his spouse. While the petitioner also submitted two affidavits from acquaintances, the affidavits did not provide any details regarding the petitioner's good faith marriage. The affidavit from [REDACTED] indicated only that "they got married . . . and live as husband and wife . . .," and the affidavit from [REDACTED] generally stated that she has known the petitioner and his spouse for ten years and met them when they moved into their apartment. Neither affiant provides any details regarding how the petitioner met his spouse, how long they dated, or any other details regarding their relationship which establish that the petitioner entered into his marriage in good faith. Similarly, while the psychological assessment submitted in response to the RFE indicated that the petitioner met his spouse at a party and that they "courted for a short period of time," those general statements are not sufficient to establish that the petitioner entered into the marriage in good faith.

In his NOID, the director noted the petitioner's failure to submit tax documents related to the entire period of his marriage, the general statements contained in the affidavits, and the inconsistencies in the psychological assessment. The director also noted the revocation of the Form I-130 initially submitted in the petitioner's behalf and indicated that it was "incumbent" upon the petitioner to show that his marriage was not entered into solely for the purpose of evading immigration laws. As the petitioner failed to provide any further evidence and to respond to the NOID, we find the director properly determined that the petitioner failed to establish that he entered into the marriage in good faith.

On appeal, the petitioner generally alleges that the director failed to "properly assess[]" the evidence contained in the record but provides no further testimonial or documentary evidence. Accordingly, the petitioner has failed to overcome the findings of the director and to establish that he married his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.<sup>4</sup>

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.

**ORDER:** The appeal is dismissed.

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<sup>4</sup> We note that although the director's NOID referenced a finding of fraud in the petitioner's revoked Form I-130, the director made no specific finding of a fraudulent marriage in his final decision. As the director's decision was not based upon any finding of fraud, we do not need to make any independent finding in this matter regarding whether the petitioner entered into his marriage to evade the immigration laws.