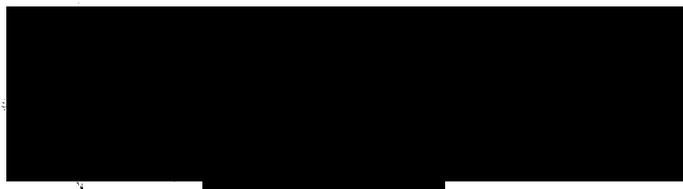


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U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 18 2006
EAC 04 181 52646

IN RE: Petitioner: [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.

 Robert P. Wiemann, Director
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 is a native and citizen of Algeria who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

According to the evidence in the record, the petitioner wed United States citizen [REDACTED] Newby on January 27, 2003 in Arlington, Virginia. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on February 6, 2003. The petitioner concurrently filed a Form I-485 application on that same date. The Form I-130 petition and the Form I-485 application remain unadjudicated.

The petitioner filed the instant Form I-360 self-petition on June 1, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage. The director denied the petition on May 17, 2005, finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his citizen spouse and that he entered into the marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

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 [Secretary of Homeland Security] 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 regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

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 abused 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.

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

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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

With the initial filing of his petition the petitioner submitted a personal statement, a copy of a joint bank statement dated November 18, 2003, a copy of an auto insurance policy covering the period from November 2003 to May 2004, and four statements from friends of the petitioner.

The director found this evidence was insufficient to establish the petitioner's prima facie eligibility and on June 9, 2004, requested the petitioner to submit further evidence to establish that he is a person of good moral character and that he entered into his marriage in good faith. On August 9, 2004, the petitioner responded to the director's

request by submitting three additional statements from friends and a police clearance from the Arlington County Police Department.

In a second request for evidence, dated February 9, 2005, the director noted that the affidavits submitted in support of the petition were "identical in text," "vague" and failed to "give specific details," related to the petitioner's claims of abuse and that he entered into his marriage in good faith. The director also noted discrepancies between the residences claimed by the petitioner and the supporting documentation contained in the record. Finally, the director noted the petitioner's claim that he and his spouse were divorced in October 2003 and the fact that the bank statement and insurance policy submitted by the petitioner were dated after that the petitioner claimed he was divorced. Accordingly, the director requested the petitioner to submit evidence to establish the legal termination of his marriage, as well as evidence to establish that he was battered by or subjected to extreme cruelty by his spouse, evidence that he resided with his spouse, and evidence that he entered into his marriage in good faith.

The petitioner responded to the director's request on April 8, 2005 by submitting a second sworn statement, a letter from a doctor, and four affidavits from friends.

After reviewing the evidence contained in the record, including the evidence submitted in response to the requests for evidence, the director denied the petition on May 17, 2005, finding that the record contained insufficient evidence to establish that the petitioner was battered by or subjected to extreme cruelty by his citizen spouse and that he entered into the marriage in good faith.

On appeal, counsel argues that the director "failed to analyze the total set of circumstances as presented, as well as, giving proper weight to that evidence." Counsel states:

Respondent again submits a cumulative amount of evidence that when taken as a whole establish clearly that he was a victim of extreme cruelty at the hands of his spouse. The evidence, as submitted, establishes that Respondent, a person of good moral character, entered into a bona fide marriage.

Based upon a review of the record, we are not persuaded by counsel's argument and find that the director properly considered the evidence submitted by the petitioner and accorded that evidence the proper weight. As it relates to the claim of abuse, the petitioner states that his spouse was using him to pay the bills and that his wife wanted to "take advantage of [him] financially." The petitioner also claims that he felt isolated because his spouse went out all the time with her friends and did not want the petitioner to go with her and that she failed to show up for the petitioner's immigration interviews because he did not satisfy her financial demands. The four statements provided by the petitioner's friends at the time of the initial filing contain identical language and indicate that the petitioner and his spouse "started having some problems," that the petitioner's spouse "blackmailed him," and tried to "take advantage financially." Similarly, the statements provided by the petitioner's friends in response to the director's requests for prima facie eligibility and further evidence indicate that the petitioner separated from his spouse due to "financial abuse," that his spouse "just used him," and asked him to "for cash money and . . . to pay her personnel [sic] bills."

None of the statements, including the petitioner's statements, indicate that any physical abuse occurred and do not indicate that any incidents of mental injury occurred. The claims regarding the alleged "financial abuse" and the

fact that the petitioner's spouse did not want him to join her with her friends are not sufficient to establish that the petitioner was the victim of any act or threatened act of violence, forceful detention, psychological, sexual abuse or exploitation.

Although the petitioner also submitted a letter from a psychiatrist, the letter does not provide any additional details regarding the claimed abuse. Rather, the letter indicates that the petitioner was "lied to and seduced by a woman who promised him marriage, but who suddenly deserted him."

As it relates to the petitioner's claims that he entered into the marriage in good faith, again, the statements submitted in support of the petition are of the most general nature. In his initial affidavit, the petitioner states that he "know [his] wife . . . on September of 2002. That we got married on January 27, 2003. That after I got married I moved to my wife's apartment and we started having some problems" The petitioner does not provide any details as to how he met his spouse, any details about their courtship, or why they chose to get married. In his second statement, the only new details provided by the petitioner are that when he met his wife "she was a nice person . . . we used to spend all the weekends together, we were very happy of being together."

The statements initially provided by the petitioner's friends provide no further details regarding the petitioner's good faith marriage. Instead, the petitioner's friends generally state that they knew the petitioner's wife before they got married, that they know the petitioner was married on January 27, 2003, and that he moved into his wife's apartment. Subsequent statements by the petitioner's friends "confirm that [the petitioner] married" his spouse and that he was "married and lived together at the wife's apartment, their marriage was in good faith and did separate after a few problems" The remaining statements from the petitioner's friends indicate that the petitioner "was very happy with her during their relationship before marriage," that they witnessed his marriage, and visited the petitioner and his spouse at their home.

We note that although the petitioner submitted a bank statement and an insurance policy, both documents are dated November 2003, one month after the petitioner claims to have separated¹ from his wife. Despite the petitioner's claim that he resided with his spouse for at least nine months, from January 2003 until October 2003, the record remains absent any documentary evidence of a good faith marriage to include leases, the joint ownership of property, or other tax or financial documentation to establish a commingling of assets and responsibilities. The lack of evidence, combined with the lack of detail in the supporting statements, does not lead to a finding that the petitioner entered the marriage in good faith.

Accordingly, we concur with the director's findings that the petitioner failed to establish that he entered into the marriage in good faith and that he has been battered by or the subject of extreme cruelty perpetrated by his citizen spouse.

¹ It is not clear from the evidence in the record whether the petitioner is actually divorced from his spouse. In the letter dated July 26, 2004, the petitioner indicates that in October 2003 his marriage was "dissolved due to adultery and abuse." However, the letter provided by the petitioner's friend, [REDACTED], indicates that the petitioner was "separated with [his spouse] since October 2003." The petitioner failed to provide any evidence regarding the legal termination of the petitioner's marriage as requested by the director and did not provide any further information regarding the status of his marriage on appeal.

Beyond the decision of the director, we find the record is insufficient to establish that the petitioner resided with his spouse. The petitioner claims that after his marriage, he moved in to his wife's apartment and that he was forced to pay all of the bills and states:

The apartment lease is in under [sic] her name and another friend of her [sic]. I was still paying for the apartment where I was living because the lease was not expired, and when I moved to her apartment I put a friend of mine to live there in order to help me pay the rent. I also put his name in the lease, but my friend did not pay the rent for 3 months and I had to go to court and payed [sic] \$3,000 dollars. I had no money in my pocket. Nevertheless my wife continued asking me to pay all the bills and buy everything we needed for our house.

One day she ask [sic] me to separate ourselves for a while. It was three weeks before having my first interview for my residence. I moved to the apartment where I used to live and I called her several times to know if she was going to go with me to my interview, but she never answered my calls Right after the date of my first interview she called me and she was very lovely as if nothing had happened in our relationship, as is everything was normal. I went back to live with her in her apartment, and she started asking me again for money.

The petitioner provides no documentary evidence such as a lease, utility bills, financial or tax documents, or cancelled checks to show that he was residing with his spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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.

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.