



U.S. Citizenship
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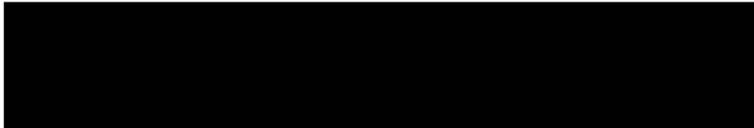
IN RE:

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of the Dominican Republic who entered the United States without inspection. The petitioner filed a Form I-360 on March 3, 2004 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 an alien subjected to battery or extreme cruelty by his United States citizen spouse. The petitioner submitted no supporting documentation with his Form I-360 and on January 13, 2005, the director issued a notice requesting the petitioner to submit evidence of his eligibility. On March 9, 2005, the petitioner submitted evidence in response to the director's request. On July 20, 2005, the director denied the petition because the evidence did not demonstrate that the petitioner married his U.S. citizen wife in good faith or that she battered or subjected him to extreme cruelty and because section 204(c) of the Act barred the approval of this petition. The petitioner timely appealed. On appeal, the petitioner submits no brief or additional evidence. For the reasons discussed below, we concur with the director's decision. Beyond the director's decision, the record also fails to establish that the petitioner resided with his wife. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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:

(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.

* * *

(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 born in the United States, 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.

* * *

(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 evidence will be considered.

Battery or Extreme Cruelty

The record shows that the petitioner married [REDACTED] a U.S. citizen, on March 7, 2001 in Puerto Rico. As evidence of battery and extreme cruelty, the petitioner submitted his own affidavit, five affidavits from friends and acquaintances, and a psychotherapist's assessment. We concur with the director's determination that these documents do not establish that [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage and we do not repeat the director's discussion here.

On appeal, the petitioner claims that the director did not give any weight to the psychotherapist's assessment or the affidavits of his friends and acquaintances. The assessment of [REDACTED], a clinical social worker, is based on one meeting of unspecified length that occurred over two years after the petitioner claims to have separated from [REDACTED]. [REDACTED] explains that the petitioner sought assistance with "feelings of depression and issues of mistrust" after his wife abandoned him, which was "the culmination of a short relationship characterized by conflict." [REDACTED] describes the petitioner's symptoms as "unresolved feelings of shame and guilt[,] social isolation [and] feelings of mistrust" and identifies his stressors as "uncertain immigration status [and] fear of deportation." In evaluating the petitioner's mental status, [REDACTED] states that the petitioner "is alert and oriented in three spheres. He is cooperative and verbal. His memory is intact and his affect is appropriate. The patient denies auditory or visual hallucinations. He denies homicidal or suicidal ideations. His speech is clear and logical. The patient appears to have adequate insight and judgment." [REDACTED] states her "impression" as "V71.09 No Diagnosis or Condition on Axis I." [REDACTED] does not describe the petitioner's marital relationship as abusive and does not diagnose the petitioner with any mental health condition. Her assessment does not support the petitioner's claim of battery and extreme cruelty.

The affidavits of the petitioner's friends and acquaintances also fail to support his claim. These affidavits do not state that [REDACTED] battered or subjected the petitioner to extreme cruelty or that they ever witnessed any incidents of abuse. To the contrary, [REDACTED] and [REDACTED] both state that the petitioner and [REDACTED] had "a normal and habitual conduct [sic] as any couple, who fulfill all legal purposes of a marriage."

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and he does not explain why such evidence does not exist or is unobtainable. Accordingly, the present record does not demonstrate that [REDACTED] subjected the petitioner to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi), 204.2(c)(2)(iv).

Section 204(c) of the Act and Entry Into the Marriage in Good Faith

As explained by the director, this petition cannot be approved pursuant to section 204(c) of the Act, which states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . , by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws[.]

On August 2, 2003, Citizenship and Immigration Services (CIS) denied the Form I-130 petition filed by [REDACTED] on the petitioner's behalf pursuant to section 204(c) of the Act. After an investigation, CIS determined that the petitioner was living with another woman, [REDACTED] at the time the Form I-130 was filed and that [REDACTED] paid [REDACTED] \$3,000 in order to secure [REDACTED]'s marriage to the petitioner.¹

On August 2, 2003, CIS also denied the petitioner's concurrently filed Form I-485 application and stated that the aforementioned investigation disclosed that the petitioner paid [REDACTED] \$3,000 for their arranged marriage. On August 26, 2003, the petitioner filed a motion to reopen and reconsider the denial of his Form I-485 in which he denied that he was living with [REDACTED] and stated that the allegation of his purportedly illegal marriage was made by a third woman, [REDACTED], who was jealous of his marital relationship with [REDACTED]. CIS reopened the petitioner's adjustment case and sent the petitioner and [REDACTED] a notice to appear for an interview on July 21, 2004. [REDACTED] did not appear for the interview and CIS denied the petitioner's motion to reopen and reconsider on July 21, 2004.

In this case, the petitioner repeats his claim that [REDACTED]'s allegations are false and asserts that he married [REDACTED] in good faith. The petitioner states, [REDACTED] was a woman was [sic] interested in me and because I rejected her advances went to the Immigration authorities in Puerto Rico so that they would deny my case and have me deported." He further states, "when I met [REDACTED] I thought I finally met the woman of my dreams and I decided to marry her. I married my wife in good faith and without regard to my immigration status." The record does not support the petitioner's claims. First, CIS determined that the petitioner entered into marriage with [REDACTED] for the purpose of evading the immigration laws in violation of section 204(c) of the Act. The record in this case provides no basis to question that decision. Second, the evidence submitted in support of this petition also fails to establish that the petitioner entered into his marriage with [REDACTED] in good faith.

The petitioner submitted photocopies of unidentified photographs of what appear to be him and [REDACTED] at their wedding celebration. The photographs alone do not establish the petitioner's good faith in marrying [REDACTED]. The petitioner submitted copies of banking documents, telephone bills, and a letter from the Internal Revenue Service (IRS). The majority of these documents are addressed to either the petitioner or [REDACTED] individually. All of the documents are dated after the petitioner states that

¹ CIS also denied the Form I-130 for abandonment pursuant to the regulation at 8 C.F.R. § 103.2(b)(13).

he and [REDACTED] separated and are consequently of no probative value in establishing the petitioner's good faith entry into marriage with [REDACTED]

The affidavits of the petitioner's friends and acquaintances also fail to support the petitioner's allegedly good faith marriage to [REDACTED]. The affidavits of [REDACTED] and [REDACTED] repeat *verbatim* the same brief affirmation of the couple's marital relationship and explanation of [REDACTED]'s purportedly retaliatory report to CIS. The affidavits of [REDACTED] and [REDACTED] also repeat *verbatim* a brief affirmation of the petitioner's marital relationship and [REDACTED] actions. The *verbatim* repetition within these affidavits indicates that the language is not the affiants' own and greatly detracts from their probative value. Moreover, all of the affidavits state that the petitioner had an extramarital relationship with [REDACTED] and the petitioner does not persuasively explain or document his good faith marriage to [REDACTED] despite his extramarital affair.

CIS records show that the petitioner married [REDACTED] for the purpose of evading the immigration laws in violation of section 204(c) of the Act and contrary to the regulation at 8 C.F.R. § 204.2(c)(1)(ix). The petitioner also failed to submit any documentary evidence his allegedly good faith marriage of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), which date from the time that he and [REDACTED] purportedly lived together. The petitioner does not explain why such documents do not exist or are unobtainable. Consequently, the present record does not establish that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii).

Joint Residence

Beyond the director's decision, the present record also fails to establish that the petitioner resided with [REDACTED]. As discussed above, the banking documents, telephone bills and IRS letter submitted with this petition are all dated after the petitioner states that he and [REDACTED] separated in July 2002. The petitioner's affidavit and those of his friends and acquaintances do not discuss his joint residence with [REDACTED]. The petitioner submitted no documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and does not explain why such evidence does not exist or is unobtainable.

In addition, as discussed by the director, the CIS investigations conducted in connection with [REDACTED]'s Form I-130 petition and the petitioner's Form I-485 application, revealed that the petitioner and [REDACTED] lived in different cities, 50 miles apart, in Puerto Rico and that, as of April 25, 2002, the petitioner was living in Haverstraw, New York and [REDACTED] was living in Atlantic City, New Jersey. On appeal, the petitioner simply states that his wife would often leave their marital home and then return, "which explains the different addresses." Yet the petitioner fails to submit any evidence that he resided with [REDACTED] in Puerto Rico or the United States from March 2001 to July 2002, the period during which the petitioner states (on his amended Form I-360) that the couple lived together. The

present record thus does not demonstrate that the petitioner resided with [REDACTED] as required by section 204(a)(1)(A)(iii)(II) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(iii).

The present record does not establish that [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage, that the petitioner entered into marriage with [REDACTED] in good faith or that he resided with her. The petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii). Section 204(c) of the Act also prohibits the approval of this petition due to the prior CIS finding that the petitioner married Ms. Muniz for the purpose of evading the immigration laws.

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his case.

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.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.