

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE: [REDACTED]
EAC 05 120 53961

Office: VERMONT SERVICE CENTER

Date: NOV 22 2008

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:



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 appeal will be dismissed.

The petitioner seeks 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 had been battered by or subjected to extreme cruelty by his 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 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 or a child of 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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which 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 further explicated 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.

* * *

(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 relevant evidence will be considered.

The petitioner in this case is a native and citizen of the Dominican Republic who entered the United States on June 28, 2002 as a nonimmigrant visitor. The petitioner married E-O,¹ a U.S. citizen, on November 6, 2002 in New York City, New York. The petitioner filed this Form I-360 on March 18, 2005.² On August 31, 2005, the director issued a Request for Evidence (RFE) of the petitioner's claim of abuse and good faith entry into his marriage. The petitioner requested an extension which was granted by the director. The petitioner, through counsel, responded with additional evidence on October 28, 2005. On March 3, 2006, the director issued a Notice of Intent to Deny (NOID). The petitioner responded to the NOID on April 3, 2006. On May 19, 2006, the director denied the petition, finding that the petitioner failed to establish that he had been battered by or subjected to extreme cruelty by his spouse and that he entered into his marriage in good faith. The petitioner, through counsel timely filed an appeal.

¹ Name withheld to protect individual's identity.

² The record also contains an unadjudicated Form I-130 and Form I-485.

On appeal, counsel claims that the relevant evidence establishes the petitioner's requisite claim of abuse and good faith marriage to, his spouse. Upon review, we concur with the director's determinations. Counsel's claims on appeal do not overcome the grounds for denial of the petition.

Battery or Extreme Cruelty

With his initial filing, the petitioner submitted a psychological evaluation and a summary of two sessions with psychotherapist, Irene Torres. The psychological evaluation does not make any claim regarding physical or psychological abuse. Instead, the petitioner indicates that he sought therapy due to feelings of depression after his spouse "abandoned" him. The assessment further describes the petitioner's claim that his spouse was engaged in a relationship with another woman.

In response to the director's RFE, the petitioner submitted a personal statement in which he reiterates the claims made in his assessment regarding his spouse's relationship with another woman. While the petitioner also generally states that he was "insulted," "humiliated," and physically and verbally abused, he provides no testimonial or documentary evidence to establish these claims.

The petitioner submitted no further evidence regarding his claim of abuse on appeal.

In accordance with the above discussion, we concur with the finding of the director that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In his unsworn statement, the petitioner indicates that he married his spouse "under faith and testimony of true love." He claims that he met his spouse in a parking lot and that they began to visit each other frequently. He then states that one day he invited her to a restaurant and "asked her to marry [him] to create a family with her [and her] children . . ." The petitioner does not further discuss how he met his spouse, their courtship, wedding or any of their shared experiences, apart from the alleged abuse. Apart from the petitioner's statement, the record contains no other testimonial evidence relevant to the petitioner's good faith entry into marriage with his spouse. While the record contains several affidavits from acquaintances of the petitioner, the affidavits do not provide any details regarding the petitioner's relationship, his intent in marrying his spouse, or any other details which establish that the petitioner entered into his marriage in good faith. The record also contains a copy of a lease, a single utility bill, and photographs of the petitioner and his spouse. It is noted, however, that the lease submitted by the petitioner is not signed by a representative of the rental company. The lack of a signature undermines the probative value of this document. The electrical bill submitted by the petitioner is dated September 2003, five months after the petitioner claimed to have stopped residing with his spouse. Accordingly, the bill is of minimal probative value in establishing a good faith marriage. The remaining evidence consists of undated, uncaptioned photographs of the petitioner and his spouse on their wedding day and what appears to be one other occasion. While the photographs indicate that the petitioner and her husband were together on these two occasions, they do not document the petitioner's life with his spouse throughout their relationship and independently establish the petitioner's good faith in marrying his spouse.

No further evidence was submitted on appeal.

In accordance with the above discussion, we concur with the finding of the director that the petitioner failed to establish that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, we additionally find that the petitioner has failed to establish that he resided with his spouse. On the Form I-360, the petitioner claims to have resided with his spouse from November 2002 until April 2003 and that he last resided with her at [REDACTED]. In his personal statement, the petitioner fails to provide any probative details about his claimed joint residence. While the petitioner submitted several affidavits from acquaintances who claim the petitioner resided at the claimed address with his spouse, none of the affiants provide any specific dates of their alleged joint residence. Further, as previously noted, although the petitioner submitted a lease agreement and a utility bill related to the claimed joint residence, the lease is unsigned by the rental company and the utility bill is dated months after the petitioner's stopped residing with his spouse. We do not find such evidence sufficient to establish that the petitioner resided with his spouse. Accordingly, we withdraw the director's finding in this regard.

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.

ORDER: The appeal is dismissed.