

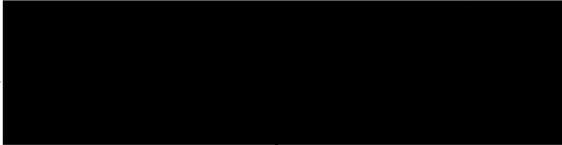
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 06 103 52297

Office: VERMONT SERVICE CENTER

Date: APR 19 2007

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.

Robert P. Wiemann
for 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 immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition because the petitioner did not establish that he married his wife in good faith, resided with her or that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits copies of documents previously submitted.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B), 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 of Homeland Security].

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

* * *

(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.

* * *

(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 record in this case provides the following facts and procedural history. The petitioner is a native and citizen of Haiti who married M-L¹, a lawful permanent resident of the United States, on December 27, 1996 in Haiti. On March 16, 2002, the petitioner entered the United States as the nonimmigrant spouse of a lawful permanent resident (V-1). The petitioner filed this Form I-360 on February 16, 2006. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good-faith entry into the marriage, joint residence and battery or extreme cruelty. The petitioner responded to the NOID with additional evidence. The director denied the petition on August 31, 2006 on the grounds cited in the NOID and the petitioner timely appealed.

On appeal, the petitioner submits copies of affidavits previously submitted and states that the affiants are willing to testify on his behalf. We concur with the director's determinations. The petitioner's statements on appeal fail to overcome the grounds for denial.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's allegedly good-faith entry into marriage with his wife:

- Affidavit of [REDACTED], the petitioner's brother-in-law;
- Affidavit of [REDACTED] the son of the petitioner's wife;
- A letter dated January 8, 2004 from Provident Bank stating that the petitioner and his wife have maintained a joint account since December 30, 2003;
- Copy of a 2003 joint federal income tax return for the former couple that is unsigned;
- "Masterfile Audit Report" dated December 31, 2003 from the petitioner's employer, which lists the petitioner's federal tax filing status as single;
- "Masterfile Audit Report" dated April 5, 2004, which lists the petitioner's federal tax filing status as married;
- Earnings statement of the petitioner dated January 2, 2004, which states that the petitioner's address was changed effective on the pay period ending December 27, 2003 and that the petitioner's taxable marital status is single;
- The petitioner's 2003 Form W-2 and earnings summary;
- The petitioner's Form G-325A, Biographic Information, dated February 26, 2003; and
- Photographs of the petitioner and his wife at their wedding and on one other, unspecified occasion.

¹ Name withheld to protect individual's identity.

Mr. [REDACTED] states that the petitioner and his sister were married in December 1996 in Haiti, but he does not indicate that he witnessed the wedding. Mr. [REDACTED] reports that the petitioner and his sister "had a good life together. [The petitioner] did his best to keep the relationship going but everyday some new problem comes up. My sister decided not to continue to live together but [sic] despite the fact that [the petitioner] is a very good man for her." Mr. [REDACTED] provides no further, probative information. Mr. [REDACTED] similarly attests to the petitioner's marriage to his mother, but does not indicate that he witnessed the wedding. Mr. [REDACTED] states that the petitioner was a good stepfather to him, but he provides no probative information relevant to the petitioner's allegedly good-faith entry into the marriage.

The letter from the Provident Bank simply states that the petitioner and his wife opened a joint account on December 30, 2003. The letter does not provide any further details and is not accompanied by any account statements or other evidence that the account was actually used by the petitioner and his wife. The 2003 federal income tax return is unsigned and the petitioner submitted no evidence that the return was actually filed with the Internal Revenue Service.

Although the petitioner married his wife in 1996 and arrived in the United States on March 16, 2002, the record indicates that prior to receiving the December 15, 2003 notice of an interview for his Form I-485, Application to Adjust Status, the petitioner did not use the purported marital address or jointly file income taxes with his wife. The Masterfile Audit Reports show that the petitioner changed his federal tax filing status from "single" to "married" sometime after December 2003 and prior to April 5, 2004. The January 2, 2004 earnings statement lists the petitioner's federal income tax filing status as single and indicates that prior to December 2003, the petitioner lived at an address different than his purported marital residence. The petitioner's 2003 earnings summary also lists his tax filing status as single and both the earnings summary and the 2003 W-2 forms are addressed to the petitioner at an address different from his purported marital home, which the petitioner states that he had lived at since March, 2002 on his Form G-325A.

The photographs show that the petitioner and his wife together on two occasions, but are insufficient to establish the petitioner's good-faith entry into their marriage. Although the petitioner states on the Form I-360 that he lived with his wife from 1990 until April 2004, he submitted no other documentary or testimonial evidence of his allegedly good-faith entry into marriage with his wife of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the NOID. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). In addition, the petitioner failed to submit a statement addressing the discrepancies in the record regarding his tax-filing status and residence with his wife, as specifically requested in the NOID. The petitioner also submitted no personal statement explaining in detail how he met his wife, their courtship, wedding, joint residence or any of their shared experiences. Accordingly, the record does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Joint Residence

The same evidence listed in the preceding section is relevant to the petitioner's claim of having resided with his wife. On the Form I-360, the petitioner states that he lived with his wife from 1990 until April 2004 and that they last lived together at a residence in Jersey City, New Jersey. On his Form G-325A, the petitioner states that he began living at the Jersey City residence in March 2002 (after his arrival in the United States). However, the record contains no documents addressed to the petitioner at this address prior to December 2003.

As discussed in the preceding section, the record indicates that the petitioner changed his address to the purported marital residence in December 2003, after receiving notice of his adjustment interview. The bank letter states that the former couple opened an account on December 30, 2003 and lists the Jersey City residence as the former couple's address, but the letter is unaccompanied by, for example, postmarked statements jointly addressed to the petitioner and his wife. The 2003 federal tax return also lists the Jersey City address as the former couple's joint residence, but neither the petitioner nor his wife signed the return and the petitioner submitted no evidence that the return was actually filed. The petitioner's 2003 W-2 Forms are addressed to him at a residence in Brooklyn, New York, not the purported marital residence in Jersey City. Finally, even if the photographs were taken at the petitioner's alleged marital home, the pictures alone would be insufficient to establish the requisite joint residence.

Mr. [REDACTED] does not discuss the petitioner's purported residence with his mother. Mr. [REDACTED] indicates that the petitioner and his wife resided together for some, unspecified amount of time until the petitioner's wife decided to stop living with the petitioner. Yet Mr. [REDACTED] does not state the address of any home that the petitioner and his wife shared and he does not indicate that he ever visited them at any joint residence or provide any other probative information.

The petitioner failed to submit his own statement addressing the discrepancies in the record regarding his address during his marriage and indicating the specific dates and locations that he resided with his wife, as specifically requested in the NOID. The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and in the RFE. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The record fails to establish that the petitioner resided with his wife, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- Affidavit of Mr. [REDACTED] the petitioner's brother-in-law; and
- Affidavit of Mr. [REDACTED] the son of the petitioner's wife.

The statements of Mr. [REDACTED] and Mr. [REDACTED] fail to establish the petitioner's claim. Regarding the petitioner's marriage, Mr. [REDACTED] states, "[the petitioner] did his best to keep the relationship going but everyday some new problem comes up." Mr. [REDACTED] provides no further, probative information and his brief statement does not indicate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. Mr. [REDACTED] states, "Unfortunately, something happen between them, I don't know. Their relationship falls apart as well as the love they had for each other." Mr. [REDACTED]'s statement is of no probative value. He states that he does not know the reason for the breakdown of the petitioner's marriage and does not indicate that the petitioner's wife subjected him to battery or extreme cruelty.

The petitioner did not submit his own statement detailing his wife's alleged abuse, as requested in the NOID, and the petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and in the RFE. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The record fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

The petitioner has not established that he entered into marriage with his wife in good faith, that he resided with her and that his wife subjected him to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act and his petition must be denied.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.