

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] Office: VERMONT SERVICE CENTER Date: DEC 28 2007  
EAC 04 182-52040

IN RE: Petitioner: [REDACTED]

PETITION: Petition for 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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The January 10, 2007 decision of the director will be affirmed and the petition will be denied.

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 further 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 of Homeland Security].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The director initially denied the petition on August 5, 2005, finding that the petitioner failed to establish that he resided with his spouse, that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage, and that he entered into his marriage in good faith. On appeal, the AAO concurred with the finding of the director but remanded the case because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on June 26, 2006 in accordance with the AAO's May 23, 2006 remand decision, incorporated here by reference. The petitioner responded to the director's NOID on July 21, 2006 and October 20, 2006 by submitting additional evidence. After reviewing the evidence submitted in response to the NOID, the director denied the petition on January 10, 2007, finding that although the petitioner had submitted sufficient evidence of his residence with his spouse and of his good faith marriage, he failed to establish that he had been battered or subjected to extreme cruelty by his spouse during their marriage. The director certified her decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. Although additional documentation was received into the record after the director's certification decision, the documentation does not relate to the petitioner's Form I-360 petition. Accordingly, the record is considered to be complete as it now stands.

As all of the relevant evidence submitted prior to the AAO's remand has been adequately discussed, our review will focus on the evidence submitted in response to the director's NOID. The evidence consists of the following:

- Two letters from the petitioner.
- A Nevada Power bill in the petitioner's name dated June 16, 2006.
- A Southwest Gas Corporation bill in the petitioner's and his spouse's names, dated July 6, 2006.

- Documents related to the petitioner's 2005 federal income tax returns jointly filed with his spouse.
- Copies of the petitioner's spouse's driver's licenses and social security cards.
- An application for and a copy of a lease for an apartment at [REDACTED]
- A letter from the assistant manager of the petitioner's apartment complex.
- A copy of the petitioner's spouse's Report of Confidential Social Security Benefit Information.
- A notice to the petitioner's spouse from the Nevada Division of Welfare and Supportive Services.
- A letter to the petitioner's spouse regarding a pre-hearing conference with Clark County Nevada's Legal Services Program.

#### *Battery or Extreme Cruelty*

As it relates to his claim of abuse, in the petitioner's July 19, 2006 letter submitted in response to the director's NOID the petitioner stated that his spouse is "always in rehab," and that she is "insane and bipolar." These general statements are not sufficient to overcome the findings of the director and to establish that the petitioner was battered or subjected to extreme cruelty by his spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner provided no further statement or evidence regarding the abuse perpetrated against him by his spouse. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

Beyond the decision of the director, we find two additional issues that preclude approval of the petition. Specifically, we find that the petitioner has not established that he resided with his spouse or that entered into his marriage in good faith. 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).

#### *Residence*

On the Form I-360, the petitioner indicated that he resided with his spouse from June 2001 until October 2002 and that he last resided with his spouse at [REDACTED]. The petitioner provided no personal statement or affidavits from witnesses to describe his residence with his spouse. As documentary evidence, the petitioner submitted copies of rent receipts, his 2004 federal income taxes, and three utility bills. The director determined this evidence to be insufficient, noting that it lacked "complete date(s)," and was "issued in [the petitioner's spouse's] name only." The director further stated:

...[Y]ou submitted copies of rent receipts for the address at which you claimed to reside with your spouse. Although the receipts are for the Mark Twain Apartments where you claimed to reside with [your spouse], they lack a complete date and they are issued in her name only. This is not satisfactory evidence of a shared residence.

\* \* \*

Also, you submitted a payment coupon from Sprint and a utility bill that is addressed to you and [your spouse] after your reported separation date. The bill from Southwest Gas Corporation is dated March 8, 2005 and is addressed to you and [your spouse] at [REDACTED]

[REDACTED] in Las Vegas, NV. The Sprint payment coupon does not contain a date; however, it is addressed to you and [your spouse] at the [REDACTED]. The evidence dated after your reported separation date is inconsistent with your claims of joint residence and this is not sufficient to establish your claims. Additionally, you submitted one bill from Nevada Power addressed to you individually at the [REDACTED] address. Since the statement does not contain [your spouse's] name and is dated in March of 2005, after your reported separation date, the statement does not provide evidence of a shared marital residence.

In addition to finding that the evidence submitted by the petitioner did not sufficiently establish that he resided with his spouse, the director found that there were inconsistencies in the petitioner's claims. He stated:

Additionally, the record contains a Biographic Information Sheet (Form G-325) that you signed on March 14, 2002. You indicated on this form that you resided with [your spouse] at the claimed marital residence from January 2001 until at least the date you signed the G-325 [March 14, 2002]. It is noted on this petition, you claimed to have resided at that address from June 2001. Since inconsistencies have been noted in the record, this may serve to undermine the credibility of your claims.

Despite finding that there were inconsistencies in the record and that evidence dated after the date of the petitioner's separation from his spouse was not sufficient to establish the petitioner's claims of a joint residence, without any explanation, the director's certified decision now finds that a letter and lease from the petitioner's apartment manager attesting to the petitioner's residence from July 2004 is sufficient to establish his residence with his spouse. We do not agree. First, a lease and a letter that he resided with his spouse since July 2004, one month *after* he filed the Form I-360 petition, is not sufficient evidence of the petitioner's claimed residence with his spouse. Second, and more importantly, the petitioner has not provided any explanation for the inconsistency previously noted by the director regarding the date the petitioner first began residing with his spouse. The claim contained in the petitioner's July 19, 2006 statement that he and his spouse "still and always live together *when she came back in 2004* [emphasis added]," does not address the claims made by the petitioner at the time of filing, that he resided with his spouse from June 2001 until October 2002. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, we withdraw the director's finding that the petitioner has established that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Good Faith Marriage*

In his initial decision, the director noted the petitioner's submission of tax documents and utility bills but indicated that "joint documentation dated after [the petitioner's] reported separation date is not sufficient to demonstrate that [he] married in good faith. The director also recognized the petitioner's submission of photographs and a personal statement but found the photographs did not document any of the petitioner's shared history with his spouse beyond their marriage ceremony and that the petitioner's statement lacked details and "did not offer any information about [his] courtship or ... relationship after the date of [his] marriage."

In his certification decision, the director listed the petitioner's additional submission of a personal statement, two bills, and tax information from 2005, and found, without any further explanation, that this evidence was sufficient to establish the petitioner's good faith marriage. Again, we do not agree. The bills listed by the director are dated July 2006, two years after the bills previously noted by the director as being insufficient because they were "dated after [the] reported date of separation." Similarly, there is no explanation for why the director was persuaded by the petitioner's 2005 tax returns submitted in response to the NOID, when he previously found the petitioner's 2004 tax returns to be insufficient. Accordingly, we withdraw the director's finding that the petitioner has established that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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. Accordingly, the January 10, 2007 decision of the director is affirmed and the petition is denied.

**ORDER:** The petition is denied. The January 10, 2007 decision of the director is affirmed.