



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

BA

JAN 05 2007

FILE: [REDACTED]
EAC 06 070 51399

Office: VERMONT SERVICE CENTER

Date:

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. Wichmann, 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 resided with his spouse, that he entered into their marriage in good faith, and that he was battered by or subjected to extreme cruelty by his spouse.

The petitioner 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:

(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 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.

* * *

(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 petitioner in this case is a native and citizen of India who entered the United States as an F-1 nonimmigrant

on August 22, 1997. The petitioner married K-F,¹ a United States citizen in Morristown, New Jersey on April 16, 2001. The petitioner and his spouse were divorced in the New York State Supreme Court on July 14, 2004. The petitioner filed this Form I-360 on December 30, 2005.² On February 28, 2006, the director issued a Request for Evidence (RFE) to the petitioner and the petitioner timely responded on April 24, 2006. The director issued a NOID on May 26, 2006 and the petitioner responded on July 10, 2006. The director denied the petition on August 29, 2006 and the petitioner filed a timely appeal on September 21, 2006.

On appeal, although the petitioner submits an additional “statement of facts” and two additional affidavits from the affiants who previously submitted statements on the petitioner’s behalf, he does not allege any error of fact or law on the part of the director. Upon review, as will be discussed we concur with the director’s determinations and find that the petitioner’s appellate submission does not overcome the grounds for denial of the petition.

Joint Residence

On the Form I-360, the petitioner claimed that he resided with his spouse from 2000 until 2003, and that he last resided with his spouse at [REDACTED]. In the “statement of facts” submitted by the petitioner at the time of filing, he claimed that both “[b]efore and after the marriage, [he and his former spouse] lived together at [REDACTED]. . .” Although counsel for the petitioner indicated in his “Memorandum of Law” that the petitioner and his former spouse “shared the same lease,” the petitioner failed to submit a copy of the lease for [REDACTED] showing that the petitioner and his former spouse were both listed as tenants at the claimed address and to identify their exact dates of residence.

In the director’s NOID, the director highlighted several discrepancies between the claims made by the petitioner regarding his residence with his spouse and documentary evidence contained in the record. Specifically, the director noted the fact that although the petitioner claimed to have resided with his spouse at [REDACTED] both *before* and after his marriage, the marriage certificate indicated that prior to their marriage, the petitioner resided at [REDACTED] while his former spouse resided at [REDACTED]. The director also noted the information contained on the Form I-130 and Form I-485, which were filed in 2001, indicated that the petitioner and his former spouse resided at [REDACTED] Hanover Township, New Jersey. Although not noted by the director, the record also contained the Forms G-325A submitted by the petitioner and his former spouse in April 2001 in which they were requested to list their residences for the previous five years. The petitioner listed his address from August 1997 to April 2001 as [REDACTED] while his former spouse listed her address from December 1974 to April 2001 as [REDACTED] and from April 2001 as [REDACTED]. The director noted that although the affidavit from [REDACTED] stated that the petitioner and his spouse resided at [REDACTED] the testimonial evidence did not carry sufficient weight with the discrepancies contained in the record.

In response to the director’s NOID, the petitioner offered the following statement regarding the discrepant information related to his residence with his spouse:

¹ Name withheld to protect individual’s identity.

² Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, filed in the petitioner’s behalf by his citizen spouse and a Form I-485, Application to Adjust Status. The record reflects that the Form I-130 was terminated by the Service and the Form I-485 was denied on August 18, 2003.

Before I married [K-F-], I was residing at [REDACTED], Morristown, NJ 07960. Once I got married, [K-] and I moved to [REDACTED] Morristown, NJ 07960. I used my friend's address ([REDACTED], Hanover NJ) as my mailing address because I did not know how long we would live at [REDACTED]. I feared that important legal correspondence would be lost.

The statement fails to provide an explanation for the discrepancy between his previous statement in which he claimed that he and his former spouse lived together at [REDACTED] before they were married and the statement offered in response to the NOID in which he claimed that he and his former spouse did not reside together until after they were married.

Based upon the noted discrepancies, the petitioner's failure to explain the discrepancies, and the lack of documentary evidence of their residence, the director determined that the testimonial evidence regarding their residence was not sufficient to establish the petitioner's claims.

In his statement on appeal, the petitioner reiterates the claims made in response to the NOID that he and his former spouse did not begin residing together until after they were married and that he used the [REDACTED] address to ensure that his "important documents" would not get lost. The petitioner fails to provide any explanation for why he initially claimed that he began residing with his spouse at [REDACTED] in 2000, prior to his marriage.

Based upon the above discussion, we concur with the finding of the director. On appeal, the petitioner has failed to identify any error on the part of the director or to provide any testimonial or documentary evidence to establish his residence with his spouse. Moreover, the petitioner has failed to provide any explanation for his discrepant statements. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the petitioner has failed to establish that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

With his initial filing, the petitioner claimed that his spouse used the Form I-130 petition to "harass and intimidate" him, that she took drugs and stayed out late, did not work, stole money, neglected household duties and expenses, and committed adultery. The petitioner also generally claimed that he was punched, kicked, and smacked by his former spouse whenever she wanted money.

In response to the director's RFE the petitioner added the additional claim that during their marriage, his spouse became pregnant with the child of another man. In addition, the petitioner submitted two affidavits from friends. [REDACTED] claimed that she has "played the role of advisor" and "mediated in resolving disputes and abuses" between the petitioner and his former spouse. [REDACTED] claimed that at the gathering of a mutual friend, the petitioner's former spouse "verbally disrespected" the petitioner and that several months later when he ran into the former spouse at the grocery store, she indicated that she was pregnant with another man's child. Neither affidavit contained any specific details regarding the claimed abuse.

In response to the NOID, the petitioner offered no further details regarding his claim of abuse. However, he submitted new statements from Mr. [REDACTED] and Ms. [REDACTED]. In her new statement, Ms. [REDACTED] indicated that during one visit at her home in February 2003, she witnessed the petitioner's former spouse "verbally and emotionally abuse" the petitioner by "disrespecting [his] culture." Ms. [REDACTED] claimed that the petitioner's former spouse would "ridicule his accent" and "use vulgar language" Mr. [REDACTED] claimed that at the gathering described in his previous statement, the petitioner's former spouse told the petitioner he was "stupid" and threatened to "throw her drink at his face the next time he asked her to stop drinking."

On appeal, the petitioner did not allege any error on the part of the director. Instead, the petitioner and his affiants reiterate the claims previously made. Upon review, we concur with the finding of the director that the petitioner's claim are not sufficient to establish a claim of abuse. The petitioner's appellate submission does not overcome this finding.

The petitioner's general description of being "punched, kicked and smacked" is not sufficient to establish a claim of abuse. The petitioner provides no details regarding any specific incident of physical abuse and does not describe how his former spouse used the Form I-130 to "harass and intimidate" him. The statements submitted on the petitioner's behalf do not indicate that they ever witnessed any acts of physical abuse against the petitioner or indicate that they were ever told of physical abuse by the petitioner. While Ms. [REDACTED] and Mr. [REDACTED] each describe a single instance where the petitioner was called a name and disrespected, these claims are not sufficient to establish that the petitioner was subjected to extreme cruelty. Similarly, the claims that the petitioner's former spouse abused drugs and alcohol, refused to do housework or obtain employment, and had an affair are not sufficient to establish a claim of extreme cruelty. The general claims made by the petitioner fail to establish that he was the victim of any act or threatened act of violence, including any forceful detention, psychological or sexual abuse or exploitation, or that his spouse's actions were part of an overall pattern of violence. Accordingly, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In the statement submitted by the petitioner at the time of filing, the petitioner indicated that he met his spouse "while passing on the street" in January 1998 and dated until they married in March 2000. The petitioner provides no further details regarding how he met his spouse and of their courtship of over two years. The petitioner also generally asserted that he entered into his marriage in good faith "to bear children of [his] own." The petitioner offered no further details regarding his good faith marriage in response to the director's RFE and NOID.

The statements provided by Ms. [REDACTED] and Mr. [REDACTED] do not provide any probative testimonial evidence regarding the petitioner's good faith marriage. Mr. [REDACTED] indicates that he met the petitioner and his spouse in June 2002, more than a year after their marriage. Accordingly, his statement contains no information regarding the petitioner's intent at the time of his marriage. Similarly, while Ms. [REDACTED] indicates that she has known the petitioner and his former spouse since 2001, she does not indicate that she knew them prior to their marriage, that she attended their wedding or offer any other details regarding their courtship or the petitioner's intent in marrying his spouse. While Ms. [REDACTED] indicates that she was visited in her home by the petitioner and his former spouse, she does not indicate that she ever visited their home or describe their married life.

While the petitioner also submitted several photographs of the petitioner and his former spouse on their wedding

day, the photographs are of little probative value in establishing a claim of a good faith marriage. We note that despite a claimed relationship from 2000 until 2003, the petitioner has not submitted any other photographs documenting occasions or events spent together.

On appeal, the petitioner does not allege any error on the part of the director and does not provide any further details regarding his good faith marriage. However, the petitioner claims that he was not able to provide any pictures, letters and documents of his married life, because his former spouse “took all this including furniture with her.” While we do not dispute the petitioner’s explanation for the lack of documentation, the lack of documentary evidence is not as crucial as the petitioner’s failure to describe any shared assets or liabilities. The petitioner has never indicated that he shared any financial accounts or commingled funds with his spouse, that they filed taxes together as a married couple, that they obtained insurance together, or owned property together. The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). As discussed above, the testimonial evidence submitted in support of the petition contain little probative value in establishing the petitioner’s claim of a good faith marriage. The statements contain no specific details regarding their life together either prior to or after their marriage, shared events, trips, or other pertinent information. While the petitioner has provided an explanation for the lack of documentary evidence, he fails to indicate what he shared with his spouse. Accordingly, the petitioner has failed to establish that he entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the present record fails to establish that the petitioner had a qualifying relationship with a U.S. citizen under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and that he was eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on such a relationship. The Form I-360 petition was filed after the petitioner’s marriage was legally terminated. As concluded by the director and affirmed in this decision, the petitioner has failed to establish that his former wife battered or subjected him to extreme cruelty during their marriage. Consequently, the petitioner has not established that the legal termination of his marriage was connected to his former wife’s battering or extreme cruelty, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Additionally, because the petitioner did not have a qualifying relationship with his former wife under section 204(a)(1)(A)(iii)(II) of the Act, he has also not established that he is eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

For this additional reason, the petition may not be approved. 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.

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 appeal is dismissed.