

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:

EAC 06 077 52378

Office: VERMONT SERVICE CENTER

Date: SEP 25 2007

IN RE:

Petitioner:



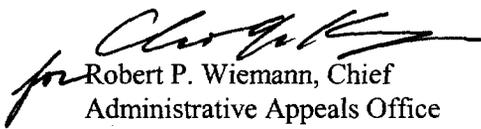
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



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 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)(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 petitioner did not establish that his spouse subjected him to battery or extreme cruelty during their marriage, that he entered into their marriage in good faith, and because section 204(g) of the Act barred approval of the petition.

The petitioner, through counsel, submits a timely appeal and brief.

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 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:

(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 . . . spouse, 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.

* * *

(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 pertinent facts and procedural history. The petitioner is a native and citizen of Egypt who entered the United States on June 22, 2001 as a B-2 nonimmigrant visitor with permission to remain in the United States until December 21, 2001. The petitioner remained in the United States beyond the period authorized and on April 26, 2003 was served with a Notice to Appear (NTA) in removal proceedings. The petitioner remains in proceedings before the Philadelphia Immigration Court and his next hearing is scheduled for October 10, 2007.

The petitioner married C-D-¹, a U.S. citizen, in Harrisburg, Pennsylvania on March 2, 2005. C-D- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, on March 23, 2005. The Form I-130 petition was denied on September 26, 2005. The petitioner filed the instant Form I-360 petition on January 17, 2006. On May 30, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty and good-faith entry into the marriage. The petitioner requested an extension of time to respond to the director's RFE on June 9, 2006. On September 14, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite battery or extreme cruelty, good-faith entry into the marriage, and pursuant to 204(g) of the Act. The petitioner, through counsel, responded to the NOID with additional evidence on October 23, 2006. The director denied the petition on March 8, 2007 on the grounds cited in the NOID and counsel timely appealed.

On appeal, counsel argues that the director's denial of the petitioner's request for a "local interview" was unreasonable. Counsel asserts that an interview was needed because the petitioner is in removal proceedings and "had difficulties obtaining evidence . . . without his wife's Social Security number." The petitioner himself does not discuss any difficulties he has encountered in obtaining supporting evidence related to his wife. Rather, in his January 5, 2006 affidavit, the petitioner states that he remains in intermittent contact with his wife over the telephone and he does not indicate that his wife's calls are abusive. Hence, counsel's assertion is not supported by the record. Moreover, by mandating consideration of all credible, relevant evidence, the statute and regulations recognize that abused self-petitioners may face obstacles in obtaining supporting documentation. *See* Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 202.2(c)(2)(i). The director complied with this mandate in his assessment of the evidence submitted by the petitioner.

Counsel also does not cite any statutory or regulatory authority to support his claim that the petitioner should have been granted an interview. We note that the regulation at 8 C.F.R. § 103.2(b)(9) states that a petitioner "*may* be required to appear . . . an interview (emphasis added)." Accordingly, there is no requirement that Citizenship and Immigration Services (CIS) conduct an interview in every case. Moreover, we note that although the petitioner had the opportunity to request oral argument before the AAO on appeal, in accordance with the regulation at 8 C.F.R. § 103.3(b), counsel makes no such request.

¹ Name withheld to protect individual's identity.

Counsel further claims that the director “failed to give appropriate weight” to the petitioner’s evidence, that the director “ignored” certain evidence, and that the petitioner submitted sufficient evidence to sustain his burden of proof. As will be discussed below, counsel’s claims on appeal fail to overcome the grounds for denial.

Battery or Extreme Cruelty

To establish his claim of abuse, the petitioner submitted a personal statement, a court notice and collection notice issued to the petitioner’s spouse, affidavits from acquaintances of the petitioner, and an Incident Investigation Report (IIR) from the Lower Paxton Township police department. In addition, the petitioner submitted copies of his I-130 interview and denial notices. Counsel alleges that this evidence “show[s] the type of person” to whom the petitioner was married.

In his personal statement, the petitioner claims that his spouse abused drugs, frequently disappeared with no explanation, and asked for money. The petitioner also indicates that his spouse screamed and cursed at him and continued to harass him after they separated.

The affidavits from [REDACTED] a neighbor of the petitioner and his spouse, and [REDACTED], a co-worker of the petitioner’s spouse, affirm the petitioner’s claim regarding his spouse’s drug abuse. [REDACTED] claims that the petitioner’s spouse had “mood swings” and would yell at the petitioner and “anyone else that got in her way.” The affidavit from Ms. [REDACTED] states that the petitioner was put “th[r]ough hell.” The affidavit from [REDACTED] the petitioner and his spouse’s manager, indicates that the petitioner’s spouse was fired because she “repeatedly didn’t show up for work and did not call” and continued to “harass” the petitioner after she was fired.

The petitioner and his affiants fail to describe any particular incident in detail and provide no specific description of the alleged abuse. The general claims contained in the testimonial evidence that the petitioner’s spouse abused drugs, would disappear, and that she screamed and cursed at the petitioner and others are not sufficient to establish that the petitioner was the victim of any physical act or threatened act of violence, that his spouse’s nonviolent actions were part of an overall pattern of violence or that her behavior rose to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

While we do not dispute the petitioner’s claim regarding his spouse’s drug abuse and the related claim that she would ask for money and disappear without explanation, the submission of documentary evidence such as a collection notice fails to establish that the petitioner was battered or subjected to extreme cruelty by his spouse. We note that although the petitioner submitted a court notice issued to his spouse as evidence of her bad character, the notice indicates that his spouse is the plaintiff, not the defendant. The petitioner submits no further explanation for either the collection notice or the court notice. The IIR, initiated

by the petitioner's spouse's mother as a missing person's report, also confirms the petitioner's spouse's problems with drugs, but does not contain any allegation of physical abuse or extreme cruelty against the petitioner. In fact, although not noted by the director in his decision, the IIR contains an allegation made by the petitioner's mother-in-law, that the petitioner threatened to kill his spouse because they had a "bad break-up" and because she was "unfaithful" to the petitioner. The remaining documentary evidence, which consists of a business card from the petitioner's mechanic, a business card from [REDACTED] and the copies of the documents related to the Form I-130 filed on the petitioner's behalf contain no probative evidence regarding the petitioner's claim of abuse.

While the director may not have discussed each piece of evidence in explicit detail, we concur with his ultimate decision. As discussed above, the petitioner has failed to establish that his spouse battered or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

As testimonial evidence of his good faith entry into marriage, the petitioner states that he met his spouse in December 2004 and that in January 2005 she was hired at his place of work. The petitioner indicates that they began to spend more time together, would go out to eat, and that his spouse "start[ed] to fall in love with [him]." The petitioner provides no probative testimony regarding his courtship with his spouse, their wedding, or any of their shared experiences, apart from his spouse's alleged abuse. As it relates to his specific feelings for his spouse, he indicates only that he was "happy." The affidavits submitted on the petitioner's behalf provide sparse details regarding the petitioner's marriage and good faith intent. While [REDACTED] indicates that she had the petitioner and his spouse to her house for dinner on two occasions, she does not provide any specific details about their life together prior to their marriage or the petitioner's intent in marrying his spouse. [REDACTED] states generally that "[t]hey were very happy," and "eager to enjoy a life together and start a family." The remaining affidavits from [REDACTED] provide no details regarding the petitioner's courtship with his spouse, their life together after their marriage, or any other probative details regarding the petitioner's good faith entry into marriage.

The relevant documentary evidence also fails to establish the petitioner's good-faith entry into the marriage. Counsel initially cited the following documents as evidence of the petitioner's "qualifying relationship":

- Marriage license and certificate
- Various wedding photos
- Apartment lease
- Applicant's paystub indicating marital status as "married"
- Various wedding cards
- Various photos
- Miscellaneous mailings

The marriage certificate and the pay stub indicating the petitioner's wife's marital status as "married" only establish that a *legal* marriage existed and that the petitioner's wife identified herself as married on her employment records for approximately 3 months in 2005. Such evidence does not establish the petitioner's own intent in marrying his spouse. The photographs submitted by the petitioner, which consist mostly of photographs from his wedding, demonstrate that the petitioner and his spouse were together at a particular place and time, but contain little probative value in establishing his good faith intent. The petitioner fails to describe the photographs, the date and time taken, the importance of the events, and to provide any other information about the photographs to establish their relevance to his claim of a good faith marriage. The evidence demonstrating that the petitioner is listed as an occupant on a lease with his spouse and that they received mail at the same address indicates that the petitioner once resided with his spouse, but has little evidentiary value in establishing the petitioner's good faith intent in marrying his spouse.

Although not listed by counsel as evidence of the petitioner's good faith marriage, we note that the record contains a single joint utility bill from UGI Utilities, Inc., covering the period from May 13, 2005 to July 14, 2005. The director noted, however, that the record contains contradictory evidence regarding the petitioner's spouse's residence during this time, and discounted the evidentiary value of the petitioner's utility bill. Neither counsel nor the petitioner challenges the director's finding on appeal or provides any explanation for the contradictory evidence.

The record lacks evidence of shared financial and bank accounts, health, life, and car insurance, tax documentation or any other evidence pertinent to shared assets and liabilities. The petitioner also failed to discuss whether there were any shared assets, utilities, or taxes and although not required to do so, failed to provide any explanation for the lack of this evidence. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

Accordingly, the petitioner has 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.

Section 204(g) of the Act

Section 204(g) of the Act states:

Restriction on Petitions Based on Marriages Entered While in Exclusion or Deportation Proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status . . . by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

As previously noted, the record shows that the petitioner married his spouse while in removal proceedings. Further, the record contains no evidence that the petitioner resided outside of the United States for two years after his marriage.

The bona fide marriage exception to section 204(g) of the Act also does not apply to the petitioner. Section 245(e) of the Act states:

Restriction on Adjustment of Status Based on Marriages Entered While in Exclusion or Deportation Proceedings

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a

heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(aa), (a)(1)(J); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(8)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard").

As the petitioner has failed to establish that he entered into marriage with his spouse in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has also failed to demonstrate that he qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

Pursuant to the above discussion, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty by his spouse and that he entered into marriage with his spouse in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied. Section 204(g) of the Act further bars approval of this petition.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.