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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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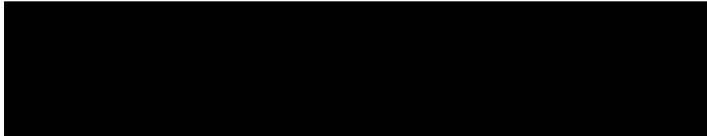


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 14 2008**
EAC 06 050 52441

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 Immigration and Nationality Act (“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 spouse.

The director denied the petition finding that the petitioner did not establish 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.

The petitioner submitted 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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc)

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) 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:

(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 . . . 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.

* * *

(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 pertinent facts and procedural history. The petitioner is a native and citizen of Trinidad and Tobago. On February 20, 2002, the petitioner married T-S-¹ a U.S. citizen, in Mineola, New York. On March 6, 2002, T-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on the same date. Both the Forms I-130 and I-485 remain unadjudicated. On February 9, 2004, the petitioner filed a Form I-360, claiming eligibility as the abused spouse of a United States citizen. The petitioner and T-S- were divorced in New York on May 3, 2005.² The Form I-360 was denied on August 15, 2005.

The petitioner filed the instant Form I-360 on December 1, 2005. On March 10, 2006, the director issued a Request for Evidence (RFE) for further evidence to establish the petitioner's claim of joint residence, abuse, good moral character and good faith entry into his marriage. The petitioner responded to the RFE on May 24, 2006 and again on June 20, 2006. On July 28, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish the requisite battery or extreme cruelty and good faith marriage. **The petitioner submitted a timely response to the NOID.** On November 7, 2006, the director denied the petition, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by T-S- during their marriage and that he entered into his marriage in good faith. The petitioner submitted a timely appeal with additional testimonial evidence. As will be discussed, we concur with the determinations of the director and find that the petitioner has failed to establish his eligibility.

¹ Name withheld to protect individual's identity.

² Supreme Court of the State of New York, Matrimonial Part 4, New York County, Index # [REDACTED]

Battery or Extreme Cruelty

At the time of filing, the petitioner submitted a "Statement of Facts" and "Affidavit in Support" of his petition. In his "Affidavit in Support" of the petition, the petitioner generally claims that T-S- was "oppressive, abusive and intimidating." In his "Statement of Facts," the petitioner claims that T-S- promised to file a Form I-130 petition on his behalf, but used the I-130 petition to harass and intimidate him. The petitioner also claims that T-S- "attacked" him in the presence of T-S-'s son, smacked, kicked and threatened him with a butcher knife, and controlled all of their finances. The petitioner further claims that T-S-'s ex-boyfriend threatened to kill the petitioner and that this threat made him fearful for his life because T-S-'s former ex-boyfriend was an ex-convict and a gang member.

In his April 12, 2006 statement submitted in response to the director's RFE, the petitioner did not elaborate on his prior claim regarding T-S-'s physical abuse, violence and threats. Rather, the petitioner states only that because T-S-'s ex-boyfriend looked "tough and mean," and threatened the petitioner, the petitioner and T-S- decided to separate. Although the petitioner states that T-S- "kept harassing" him until the divorce was granted, the petitioner does not elaborate on this statement or provide specific descriptions of T-S-'s behavior.

Similarly, in his August 27, 2006 statement, submitted in response to the director's NOID, the petitioner provides no claims regarding physical abuse or extreme cruelty perpetrated against him by T-S-. Rather, the petitioner reiterates his claim regarding being threatened by T-S-'s ex-boyfriend. The petitioner provides no indication that T-S- encouraged or validated the behavior of her ex-boyfriend but rather indicates that, like the petitioner, T-S- was afraid of her ex-boyfriend and feared for her safety.

In addition to his personal statements, the petitioner submitted statements from friends, [REDACTED] and [REDACTED]. These statements, however, contain no probative information regarding the petitioner's claim of battery or extreme cruelty by T-S-. Rather, the statements all contain references to the petitioner's fear of T-S-'s former boyfriend.

Upon review, we find the statements submitted by the petitioner and on his behalf are insufficient to establish his claim of abuse. Although the petitioner's "Statement of Facts" referenced an instance of physical abuse, the claim lacked specific details and the petitioner failed to provide any further information regarding this incident in response to the director's RFE and NOID. The remaining allegations regarding the vague claims that T-S- took control of the finances, left the home "for weeks," and harassed and intimidated the petitioner by using the I-130 petition against him, do not demonstrate that T-S-'s 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. We note that although the petitioner claims that T-S- used the Form I-130 petition against him, the record reflects that she did, indeed, file the petition on his behalf. While the petitioner also states that T-S- did not appear for his adjustment of status interview, the petitioner does not indicate that her failure to appear was an attempt to harass or intimidate him. Instead, the petitioner claims that T-S- "refused to come out of the house for fear that her ex-boyfriend

will find us.” Finally, as it relates to the claims regarding T-S-’s former boyfriend making threats against the petitioner, the petitioner does not allege that T-S- instigated, actively condoned or was otherwise a proximate cause of the alleged abuse by her former boyfriend. As both the statute and the regulation require that the abuse be perpetrated against the petitioner *by his or her spouse* and not a third party, the petitioner’s claims about T-S-’s former boyfriend are not sufficient to establish his claim of abuse. See Section 204(a)(1)(A)(iii)(I)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb), 8 C.F.R. § 204(c)(1)(vi). Accordingly, we concur with the finding of the director, based upon the record before him, that the petitioner failed to establish that he was battered or subjected to extreme cruelty by T-S- during their marriage.

On appeal, the petitioner submits a new personal statement and additional statements from Jean Paul and Rheina Salmaron. In his statement on appeal, the petitioner states that more than a year after their marriage, T-S- “changed her whole attitude towards” the petitioner and became “very abusive.” The petitioner claims that T-S- did not want to “go anywhere or do anything” with the petitioner, was “always threatening and cursing” him, and left the apartment for a week without telling the petitioner where she was. The petitioner, however, does not describe the threats allegedly made by T-S- and fails to allege any physical abuse or even mention the purported incident in which T-S- threatened him with a butcher knife. The petitioner again indicates that T-S- failed to attend his immigration interview but provides no further information to establish that her failure to attend was part of T-S-’s attempt to control or harass the petitioner. The petitioner also reiterates his claims regarding being threatened by T-S-’s former boyfriend and now further indicates that T-S- “would threaten to kill” him and actually pushed him when he gave her the divorce documents. The petitioner provides no explanation for his failure to make these allegations in any of his previous statements. In his letter on appeal, [REDACTED] states that he witnessed an argument between the petitioner and T-S- and her former boyfriend. Mr.

[REDACTED] claims that on this single occasion, T-S- told the petitioner that he was “a ‘no-good’ and had caused her so much trouble.” In her statement on appeal, Ms. [REDACTED] states that on several unspecified occasions when she and the petitioner worked together, she received phone calls from T-S- and other unknown individuals who made threats against the petitioner. Ms. [REDACTED] does not explain her failure to describe this claim in her previous statement. Further, we note that none of the petitioner’s statements contain descriptions of the threats noted by Ms. [REDACTED] on appeal. As such, the evidence submitted on appeal is not sufficient to overcome the finding of the director. Accordingly, the petitioner has failed to establish that he was battered or subjected to extreme cruelty by T-S- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good faith marriage

In his Statement of Facts, the petitioner generally claims that he met T-S- while at work and that they enjoyed going to the movies, dinner, shopping and spending time with friends and family. The petitioner then states that they continued to date each other until T-S- proposed to him around February 2001 and that they were married on February 20, 2002. In his Affidavit in Support, the petitioner generally claims that he entered into the marriage in good faith “to bear children” of his own. In his April 12, 2006, the petitioner claims that he loved T-S- from the first “day [he] saw her and . . .

promised to love her and take care of her and her child.” In his August 27, 2006 statement, the petitioner claims that he and T-S- became close after working together and that as they were both paying rent, they “decided to get married so we can be together and only pay one rent.” Mr. [REDACTED] states that the petitioner and T-S- “were courting each other for about two years,” that he attended their wedding and saw them together on numerous occasions, such as at the movies, while shopping and at the laundry mat. [REDACTED] states generally that the petitioner and T-S- “seemed to be very happy together.” Similarly, [REDACTED] states only that she saw the petitioner and T-S- “become very close” and witnessed them going out in the petitioner’s car or to the mall. Neither the petitioner nor any his friends provide any probative information to establish that the petitioner intended to establish a life with T-S- at the time of their marriage. The statements generally describe the couple’s meeting at work, dating, and marriage, but do not provide specific details regarding their courtship, wedding, their shared experiences and interactions with each other, or other information to establish that the petitioner’s feelings and intent in marrying T-S-. The petitioner provided no documentary evidence, such as tax returns, shared financial accounts, joint utility bills, or joint insurance to support his claim of a good faith marriage. Although the lack of supporting documentation is not necessarily disqualifying, the testimonial evidence submitted by the petitioner and on his behalf lacks probative information regarding the petitioner’s feeling and intent in marrying T-S-. We, therefore, concur with the director’s finding, based upon the record before him, that the petitioner failed to establish that he entered into his marriage in good faith.

On appeal, the petitioner submitted a new personal statement and additional statements from Jean Paul and [REDACTED]. In his statement on appeal, the petitioner offers the same general claim that he got married in good faith and “with good intentions.” He provides no further description of his feelings for T-S- or other probative details regarding his intent to establish a life with T-S-. Similarly, [REDACTED] and [REDACTED] state that petitioner and T-S- “were quite happy together,” that they witnessed the petitioner and T-S- together on “on many occasions” and even traveled together on an unspecified date. The statements, however, do not provide any detailed description of occasions spent with the petitioner and T-S- and their interactions with each other to establish the petitioner’s good faith intent in marrying T-S-. As the statements submitted on appeal contain no further probative information to establish that the petitioner entered into his marriage with T-S- in good faith, the evidence is not sufficient to overcome the finding of the director. Accordingly, the petitioner has failed to establish that he entered into his marriage in good faith, as required by section 204(a)(1)(iii)(I)(aa) of the Act.

Qualifying Relationship and Eligibility for Immigrant Classification

Beyond the director’s decision, the record also fails to demonstrate that the petitioner had a qualifying relationship as the spouse of a United States citizen and that he was eligible for immediate relative classification based on such a relationship. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act requires that a self-petitioner who is divorced his spouse at the time of filing demonstrate that the divorce occurred within two years of the petition filing date and that there was a connection between the divorce and the former spouse’s battery or extreme cruelty. Although the petitioner was divorced from T-S- within the two years preceding the filing of this petition, as discussed above, the petitioner

has failed to establish that he was battered or subjected to extreme cruelty. As such, he is unable to demonstrate a connection between his divorce and T-S-'s alleged abuse. Accordingly, the petitioner has not demonstrated that he had a qualifying relationship with T-S-, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Further, as the petitioner has failed to establish that he had a qualifying relationship as the spouse of a United States citizen, he is not able to establish that he is eligible for immediate relative classification under section 201(b)(2)(A)(i) based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Residence With T-S-

Beyond the director's decision, we find insufficient and discrepant information in the record regarding the petitioner's claim of residence with his spouse. On the Form I-360, the petitioner claimed that he resided with T-S- from January 1999 until October 2004 and that he last resided with her at [REDACTED] in Jamaica, New York. In his Statement of Facts, the petitioner claimed after their marriage in February 2002, he and T-S- resided at [REDACTED]. In his RFE and NOID, the director questioned the dates provided by the petitioner, noting that the petitioner was not divorced from his first wife until June 2001. In response, the petitioner submitted a statement in which he attributed the erroneous dates contained on the Form I-360 to a "misinformed" clerk at his attorney's office.

In his April 12, 2006, the petitioner stated that after their marriage, they moved to a basement apartment but did not have any rental receipts because the landlord said it was "illegal to rent his basement." The petitioner then claimed that after T-S-'s boyfriend was released from prison, T-S- decided to leave the apartment for everyone's safety. The petitioner does not refer to any other residences shared with the petitioner during their marriage. However, in his August 28, 2006 statement, the petitioner refers to at least two residences with T-S-. He states:

We had a simple wedding in February 2002 . . . [T-S-] . . . and I lived at [REDACTED] in Jamaica for a few months. Then we moved to [REDACTED] in Brooklyn.

* * *

Somehow [T-S-'s] ex-boyfriend found out where we lived and came and threatened us . . . So, in 1994, I rented another place in Queens Village for myself to live.

The petitioner submitted no further testimonial evidence regarding his residences with T-S-, the specific dates that they resided at each location, a description of their residence and their joint belongings, or any other probative information regarding the claimed residences. The petitioner submitted no documentary evidence to demonstrate that he shared a residence with T-S- at either [REDACTED] or at the unidentified [REDACTED] address in Brooklyn. Further, although [REDACTED] claims to have visited the petitioner, he indicates that the petitioner lived with T-S- "in a basement in Queens Village." This statement conflicts with the petitioner's claim that he moved to Queens Village by himself after being threatened by T-S-'s boyfriend.

In addition, the record contains numerous other discrepancies regarding the petitioner's claim of residence with T-S-. The Form I-130 submitted by T-S- on March 6, 2002, lists the couple's address as [REDACTED] while the Form G-325 signed by T-S- on February 5, 2002 lists her address as [REDACTED] in Mineola, New York since June 1994. On his Form I-485, Application to Adjust Status, completed and signed by the petitioner on February 8, 2002, and the accompanying Form G-325, Biographic Information, the petitioner listed his residence as [REDACTED] in Briarwood, New York from October 1999 until February 2002. Moreover, the record contains the petitioner's 2002 Form 1040, U.S. Individual Tax Return, prepared on February 7, 2003, various other 2002 tax documents, and bank statements from November 2003 through January 2004 that list the petitioner's address at the [REDACTED] address. 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).

Based upon the discrepancies discussed above and the lack of specific and probative testimonial or documentary evidence, the petitioner has failed to establish that he resided with T-S- as claimed. We therefore, withdraw the director's finding in this regard. 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.