

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9

[Redacted]

FILE:

EAC 06 216 50487

Office: VERMONT SERVICE CENTER

Date:

JAN 08 2008

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:

[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. 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.

The director denied the petition because the petitioner did not establish that he had a qualifying relationship with a U.S. citizen, was eligible for immediate relative classification based on such a relationship, was battered or subjected to extreme cruelty by his wife during their marriage and that he entered the marriage in good faith.

On appeal, counsel submits a 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 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen

(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 Peru who entered the United States on May 14, 2003 as a nonimmigrant visitor (B-1). On September 14, 2004, the petitioner was served with a Notice to Appear for Removal Proceedings charging him under section 237(a)(1)(B) of the Act for having remained in the United States beyond the period of his authorized stay. The petitioner remains in proceedings before the New York Immigration Court and his next hearing is scheduled for January 10, 2008.

On September 29, 2004, the petitioner married E-B-¹, whom the petitioner claims is a U.S. citizen. The petitioner filed this Form I-360 on July 14, 2006. On January 26, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for failure to demonstrate, *inter alia*, a qualifying relationship and the requisite joint residence, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner, through counsel, responded to the NOID with additional evidence. The director determined that the petitioner had established his residence with his wife, but had not demonstrated the requisite qualifying relationship, eligibility for immediate relative classification based on such a relationship, battery or extreme cruelty and good-faith entry into the marriage.

On appeal, counsel claims that the evidence submitted below established the petitioner's eligibility. We concur with the director's determinations that the petitioner has not demonstrated a qualifying relationship and corresponding eligibility for immediate relative classification as well as the requisite entry into the marriage in good faith and battery or extreme cruelty. We withdraw the director's determination regarding the petitioner's residence with his wife and find that the petition must be denied on this additional ground.

Qualifying Relationship

The petitioner initially submitted a copy of his marriage certificate, which states that his wife was born in Massachusetts. In response to the NOID, the petitioner submitted a second copy of his marriage certificate, on which the portion listing his wife's birthplace in the United States was highlighted. On appeal, counsel claims that the marriage certificate establishes the U.S. citizenship of the petitioner's wife because "in any county the groom and bride must documentation [sic] to demonstrate his/her

¹ Name withheld to protect individual's identity.

identity, which includes citizenship or nationality.” Counsel provides no evidence to support his assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As indicated by the director, Citizenship and Immigration Services (CIS) records contain no evidence of the U.S. citizenship of the petitioner’s wife. The petitioner has submitted no evidence that documentation of his wife’s U.S. citizenship was required for the issuance of his marriage certificate and he submits no other relevant evidence. Accordingly, the petitioner has failed to establish that he had a qualifying relationship as the spouse of a U.S. citizen, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the U.S. citizen spouse. As the petitioner has failed to establish that his wife is a U.S. citizen, he has also not demonstrated his corresponding eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Good-Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner’s alleged good faith in marrying his wife:

- Affidavits of the petitioner’s friends [REDACTED] and [REDACTED]; and
- Photographs of the petitioner and his wife at their wedding.

The petitioner 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 director’s 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. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

The petitioner submitted no personal statement describing how he met his wife, their courtship, wedding, or any of their other shared experiences. The affidavits from [REDACTED] and [REDACTED] repeat the same text verbatim, which indicates that the language is not the affiants’ own and greatly detracts from the probative value of their testimony. Moreover, these three affiants simply state that the petitioner’s marriage was “real and made with a good faith [sic],” but they provide no probative details. The affidavits of [REDACTED] and [REDACTED] similarly lack detailed information.

Both [REDACTED] and [REDACTED] affirm that the petitioner's marriage was "real and made with good faith," but they provide no further, probative information. The photographs show the petitioner and his wife at their wedding, but the pictures do not establish the petitioner's good faith in entering the marriage. Accordingly, the petitioner has failed to demonstrate that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that he resided with his wife:

- Affidavits of the petitioner's friends [REDACTED], and [REDACTED]; and
The petitioner's marriage certificate.

The petitioner submitted no other evidence of his residence with his wife of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and in the director's 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. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

On the Form I-360, the petitioner stated that he resided with his wife from September 2004 until December 2005 and that they last lived together at a residence on [REDACTED] in Brooklyn, New York. The marriage certificate lists the Brooklyn residence as both the petitioner's and his wife's address, but this document alone is insufficient to establish that the petitioner resided with his wife.

The director determined that the affidavits from [REDACTED] and [REDACTED] were sufficient to show that the petitioner resided with his wife. However, as discussed in the preceding section, the latter three affidavits contain identical text, greatly detracting from their probative value. Moreover, these affiants merely state that the petitioner and his wife lived together at the Brooklyn residence until their separation in December 2005. They do not describe any particular visits that they made to the former couple's home or provide any further details. [REDACTED] similarly states that the former couple lived together at the Brooklyn residence, but he does not discuss any visits he made to their home or provide any further, probative information. Accordingly, this portion of the director's decision is withdrawn as the petitioner has not established that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

As evidence of his wife's battery or extreme cruelty, the petitioner submitted the affidavits of Mr. [REDACTED] and [REDACTED]. As repeatedly mentioned, the latter three affidavits contain identical text, which greatly detracts from their probative value. Moreover, these affidavits merely state that the petitioner's wife insulted, berated and yelled at the petitioner and subjected him to

unspecified psychological abuse. These affiants describe no particular incidents of abuse that they witnessed in detail or provide probative information about the petitioner's physical or mental health during his marriage. [REDACTED] also fails to provide detailed information and simply states that he observed the petitioner's wife verbally abuse him on a number of unspecified occasions. The petitioner failed to submit his own, detailed statement describing the alleged abuse, as requested in the NOID, and he submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and in the director's 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. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

On appeal, counsel merely asserts that the affidavits of the petitioner's friends establish his wife's abuse. As discussed above, those affidavits lack probative detail and are insufficient to meet the petitioner's burden of proof. Accordingly, the petitioner has not demonstrated that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that he had a qualifying relationship with his wife, was eligible for immediate relative classification based on such a relationship, entered into the marriage in good faith, resided with his wife and was subjected to her battery or extreme cruelty during their marriage. 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.

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). 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.