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

PUBLIC COPY

By

[REDACTED]

FILE:

[REDACTED]
EAC 05 196 52120

Office: VERMONT SERVICE CENTER

Date: **JUN 03 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. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification pursuant to 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.

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, 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 clause (ii) or (iii) of subparagraph (B), 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 director initially denied the petition on January 26, 2006, finding that the petitioner failed to establish that he entered into his marriage in good faith. In the AAO's July 13, 2006 decision on appeal, although we concurred with the director's determination, we remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ In our remand decision, we also requested the director to consider whether the petitioner had established that he was battered or subjected to extreme cruelty by his spouse during their marriage as well as the applicability of section 204(g) of the Act given that he married his spouse while in proceedings. Upon remand, the director issued a NOID on December 4, 2006, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish that he entered into his marriage in good faith and that he was battered or subjected to extreme cruelty by his spouse. The director did not make any reference to section 204(g) of the Act. The petitioner responded to the NOID on January 31, 2007. After considering the evidence submitted in response to the NOID, the director denied the

¹ On April 17, 2007, Citizenship and Immigration Services (CIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100-19107. The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

petition on September 7, 2007, based on the grounds cited in the NOID. The director certified his 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. In response, regarding the petitioner's good faith marriage, counsel for the petitioner submitted a two-page memorandum and the petitioner submitted an additional statement. Neither the petitioner nor counsel address the director's finding regarding the petitioner's failure to establish that he was battered or subjected to extreme cruelty by his spouse.

As will be discussed, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. Hence, we will only address the evidence submitted after that decision was issued. In response to the director's NOID, the petitioner submitted a personal statement, statements from friends and acquaintances, and copies of documents previously submitted.

Good Faith Marriage

In our previous decision we noted inconsistencies in the addresses contained on the petitioner's utility bills. We then indicated that the burden was on the petitioner to resolve the inconsistencies with independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The petitioner submitted no further testimonial or documentary evidence to resolve the noted discrepancies in his response to the NOID. Rather, in his personal statement, the petitioner stated only that he had "already provided a large amount of original documents" The petitioner provided no further probative details regarding how he met his spouse, their courtship or life together after their marriage, except as it related to the claimed abuse. Similarly, the statements submitted on the petitioner's behalf by his friends and acquaintances made only vague references to seeing the petitioner with his spouse "at nightclubs and other places," "social events," and "special occasions." The statements did not, however, discuss the petitioner's relationship or feelings for his spouse prior to his marriage, nor did they provide descriptions of the shared events and details of the petitioner's relationship and interactions with his spouse to establish the petitioner's claim of a good faith marriage.

On certification, as it relates to the discrepancies in the utility bills regarding the petitioner's claimed residence with his spouse, counsel states:

When [t]he [p]etitioner started his relationship with [L-Z-], he lived at [REDACTED]. She moved in with him, and they lived together as boyfriend and girlfriend at this address. When they married, at the beginning of 2003, they lived at this address with his ex-roommate, [REDACTED] but she and [t]he [p]etitioner's roommate did not get along. Then they decided to move to [REDACTED]. They lived there for a few months, and then moved again to [REDACTED], where they lived together until the end of [their] marriage. For a period of about two and half years, [L-Z-] and the [p]etitioner lived in three different addresses during the course of their marriage.

In his statement on certification, the petitioner claims that he and his spouse “lived at [REDACTED] first, and then moved to [REDACTED]² where [they] lived for the first time completely alone” While the petitioner and counsel attempt to clarify the petitioner’s residences with his spouse, they fail to provide any explanation for the fact that the petitioner and his spouse continued to receive electric bills and gas bills at a residence months after the petitioner claimed they no longer resided there. The petitioner’s failure to resolve these discrepancies detracts from the probative value of the documentary evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592. Therefore, based upon the lack of both testimonial and documentary evidence and the unresolved inconsistencies contained in the record, we concur with the director’s determination that the petitioner has failed to establish that he entered into his marriage in good faith.

In addition to the discrepancies discussed in our previous decision, we note further inconsistencies regarding the petitioner’s claimed residence with his spouse. Throughout this proceeding, the petitioner has claimed that after dating for several weeks, L-Z- moved into his apartment with him. According to the petitioner and counsel, the petitioner’s address at that time was [REDACTED]. The petitioner further claimed that after living together for “about four months,” they decided to get married. The Forms G-325A, Biographic Information, submitted by the petitioner and L-Z- in support of the Form I-130, Petition for Alien Relative, filed on the petitioner’s behalf by L-Z- also list their shared address at [REDACTED]. In contrast, however, on the petitioner’s and L-Z-’s marriage license, signed by both parties on January 22, 2003, the petitioner listed his address as [REDACTED] in Providence, Rhode Island. Further, L-Z- listed her address as [REDACTED] in Warwick, Rhode Island. The fact that the petitioner’s marriage license lists separate addresses directly contradicts the petitioner’s claim that he and L-Z- were residing together for “about four months” at 67 Penn Street before their marriage. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683, 694 (9th Cir. 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner’s assertions. Doubt cast on any aspect of the petitioner’s proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Beyond the decision of the director, as the petitioner has failed to establish that he entered into his 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.

Moreover, given the unresolved discrepancies regarding the petitioner’s claimed residence with his

² It is unclear from the record whether the petitioner’s reference to [REDACTED] is simply a typographical error or another discrepancy regarding his claimed residence.

spouse and the utility bills for a different address, we additionally find, beyond the decision of the director, that the petitioner has failed to establish that he resided with his spouse as claimed.

Battery or Extreme Cruelty

In his statement submitted in response to the director's NOID, the petitioner claimed that he was subjected to physical, verbal and emotional abuse during his marriage. The petitioner alleged that his spouse was a "compulsive liar," that she would drive their car while he was forced to use public transportation, that she was "lazy and constantly depressed," and was "jealous and possessive." As it relates to a claim of battery, the petitioner described an incident where he returned home after attending a friend's going-away party to find his spouse "angry and waiting" for him. He stated that his spouse scratched his face, kicked and punched him, called him names, and attempted to attack him with a knife. The petitioner indicated that he protected himself with a pillow and that although he considered calling the police, he decided not to because his wife was a "good liar" and it would be "her word against [his]." The petitioner described a second incident where he alleged that his spouse threw "plates, glasses, and whatever else she could find" at him. The petitioner claimed that the incident that caused him to leave his spouse was the result of him waking his spouse unintentionally. The petitioner indicated that his spouse started swearing, scratched him, kneed him in his genitals, and spit in his face. Finally, the petitioner alleged that after they had separated, he began to receive threatening phone calls "from unidentified cell phone numbers," that he was followed to work by strange cars, and that his car was vandalized. The petitioner claims that these acts were committed by his spouse and her family "because [he] was Hispanic and [B]lack."

As it relates to the petitioner's allegations of actions that occurred after his separation, in our previous decision, we noted the petitioner's submission of police reports and an illegible statement supporting the petitioner's request for a temporary restraining order. However, despite our indications that the photocopy of the petition for restraining order was illegible and that the police reports contained no reference to L-Z- as being a part of the alleged acts of vandalism or phone threats, the petitioner provided no further details that connect his spouse to these alleged incidents.

Although the petitioner also submitted statements from friends and acquaintances, the statements provided no further details to establish his claim of battery or abuse. Rather, the statements indicated that the petitioner went through a "traumatic experience," generally described the petitioner's spouse as being physically and verbally abusive and alleged that the petitioner's spouse flirted and had multiple affairs. The statements provided no probative details regarding any specific incident or act of alleged battery or extreme cruelty.

No further testimonial or documentary evidence regarding the petitioner's claim of battery or extreme cruelty was submitted on certification.

As discussed above, the petitioner submitted no additional documentary evidence to support his claim of abuse after issuance of the director's NOID. Although the petitioner did submit additional

testimonial evidence from friends and acquaintances, those statements lack probative details regarding the petitioner's claim of abuse. Thus, the sole additional evidence consists of the petitioner's own statement which does not adequately establish that he was battered or subjected to extreme cruelty. The petitioner's vague assertions that his spouse was a liar and that she was lazy, jealous and possessive are not sufficient to establish that the petitioner's spouse's non-physical behavior was threatening or coercive, or that she attempted to exert control over the petitioner. The petitioner has failed to establish that his spouse's actions rose to the level of extreme cruelty as those acts are 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 the petitioner also claimed that he lived in "complete isolation from friends," he stated that it was because his spouse was "very anti-social and her stuff was all over the place and it looked messy," rather than being related to any threats or coercive behavior. Moreover, both the petitioner and his friends describe being able to communicate and socialize with each other, including at parties and nightclubs. Accordingly, we do not find his allegation regarding social isolation to persuasively establish that he was subjected to extreme cruelty.

While the petitioner also discussed three incidents where he claimed to have been physically assaulted by his spouse, as noted in our previous decision and in the preceding section, the record contains numerous inconsistencies that the petitioner has failed to resolve. Given that the sole evidence of abuse rests on the statement of a petitioner whose claims have been found to be inconsistent and unreliable, we find the petitioner's statement does not carry sufficient weight to establish that he was battered or subjected to extreme cruelty by his spouse. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. Section 204(a)(1)(J) of the Act, 8 C.F.R. § 204.2(2)(i).

In conclusion, the petitioner has failed to establish that he entered into his marriage in good faith, that he resided with his spouse, and that he was battered or subjected to extreme cruelty by his spouse. Approval of the petition is further precluded by section 204(g) of the Act. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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 reasons stated above, 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 September 7, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The director's decision of September 7, 2007 is affirmed. The petition is denied.