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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B9



FILE: [Redacted]
EAC 06-200-50171

Office: VERMONT SERVICE CENTER

Date: APR 01 2009

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)

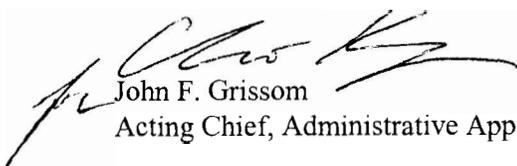
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as having been battered or subjected to extreme cruelty by his U.S. citizen spouse. The director denied the petition finding that the petitioner failed to establish that he had resided with his spouse, was battered or subjected to extreme cruelty by his spouse during their marriage and that he entered into his marriage in good faith.

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

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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 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 regulation at 8 C.F.R. § 204.2(c)(1) provides guidance regarding relevant eligibility requirements:

(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 . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner.

(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.

Procedural History and Pertinent Facts

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala who claims to have entered the United States without inspection in 1998. On April 25, 2001 the petitioner married D-R-,¹ a U.S. citizen, in Stamford, Connecticut. On April 27, 2001, D-R- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on October 10, 2001. The petitioner filed a Form I-485, Application to Adjust Status, on September 17, 2002. At an interview by U.S. Citizenship and Immigration Services (USCIS) on August 12, 2004, based on discrepancies noted in the couple's testimonies, the interviewing officer determined that there was significant doubt as to the bona fides of their marriage. As a result, a Notice of Intent to Revoke (NOIR) the approval of the visa petition (Form I-130) was issued on August 20, 2004 providing the couple an opportunity to rebut the USCIS findings. On September 10, 2004, the couple responded by submitting a joint statement and affidavits from friends and others attesting to the fact that the couple resided together and recommending them as a hard-working or honest couple in an excellent or happy relationship; and numerous documents including car and life insurance forms, bank statements, and bills for telephone, gas and electricity as evidence that they shared an address and commingled funds. USCIS found that the inconsistencies in the record had not been resolved and on April 12, 2006 revoked the approval of the I-130 Petition and denied the I-485 Application accordingly.

The petitioner filed the instant I-360 Petition on June 22, 2006. On January 16, 2007 the director issued a Notice of Intent to Deny (NOID) the petition because the petitioner had failed to establish that he had a qualifying relationship with a U.S. citizen, was eligible for immigrant classification based on a qualifying relationship, had resided with his U.S. citizen spouse, had entered into his marriage in good faith, and had been battered or subjected to extreme cruelty by his U.S. citizen spouse. Specifically, the director referred to the discrepancies noted at the petitioner's interview with USCIS on August 12, 2004 regarding the bona fides of his marriage. Regarding the failure to establish a qualifying relationship with a U.S. citizen, the director found that the evidence in the record indicated that his marriage to D-R- may have been terminated because he subsequently married another woman on May 26, 2002. The director cited to the regulation at 8 C.F.R. 204.2(c)(1)(ii), which states that the self-petitioner's remarriage will be a

¹ Name withheld to protect individual's identity.

basis for the denial of a pending self-petition, and enclosed a copy of the 2002 marriage certificate discovered by USCIS. In rebuttal, on March 7, 2007 the petitioner, through counsel, submitted 13 additional affidavits from acquaintances alleging that the petitioner was abused by his wife and/or attesting to the petitioner's good moral character. The director found that the petitioner had failed to overcome the bases for denial in the NOID and denied the petition on April 24, 2007. In response, the petitioner, through counsel, filed a Form I-290B, Notice of Appeal, on May 29, 2007. Counsel explained that the marriage certificate provided by USCIS of the alleged marriage by the petitioner to another woman on May 26, 2002 did not in fact refer to the petitioner. Counsel correctly pointed out that the middle name, date and place of birth, and names of the petitioner's parents, as established by his birth certificate, were not the same as those on the 2002 marriage certificate. Noting that the appeal was filed later than the prescribed period of 33 days, the director rejected the Form I-290B as an appeal and accepted it as a Motion to Reopen and Reconsider. The director agreed that the evidence established that the petitioner was not the individual listed on the 2002 marriage certificate and that the record contained sufficient evidence to establish that he had a qualifying relationship with D-R- and was eligible for immigrant classification based on that relationship. However, the director found that the petitioner had not provided any additional evidence to establish that he resided with his wife, had been subjected to battery or extreme cruelty and had entered into the qualifying relationship in good faith. The director thus affirmed the previous decision and denied the petition on July 26, 2007.

The petitioner, through counsel, submits a timely appeal and additional affidavits, documents and photographs. As will be discussed, the AAO finds that the petitioner has established that he resided with his U.S. citizen spouse and that he entered the relationship in good faith, but concurs with the finding of the director that the petitioner failed to establish that he had been battered or subjected to extreme cruelty by his U.S. citizen spouse.

Residence

On the Form I-360, the petitioner indicated that he resided with his spouse from April 2001 to February 2006 and that he last resided with her at [REDACTED], Stamford, Connecticut. The record also contains a Form AR-11, Change of Address Card, filed by the petitioner on February 24, 2004, notifying USCIS of his move from [REDACTED], in Stamford to [REDACTED].

With his initial submission of the I-360 Petition, the petitioner submitted copies of three electric bills, three gas bills and three AT&T bills, all of which were addressed to the petitioner and D-R- at [REDACTED] in Stamford, other than the AT&T bills which were in D-R-'s name only, and covered the period from late 2005 to early 2006. Also included with his initial submission were ten photographs of the couple's wedding ceremony showing a formal event with at least 14 guests appearing in the photographs.

The record also includes a W-2 Wage and Tax Statement for 2002 and a New York State Department of Labor Unemployment Insurance Form for 2002, both for D-R- and both indicating her address at [REDACTED] in the Bronx. These 2002 forms show D-R-'s prior address, as listed on her 2001 Form G-325A, Biographic Information, which indicates that she moved to

18 E. Walnut in April, 2001. The W-2 and Unemployment Insurance Form are inconsistent with other information and indicate that she did not report that she had moved or that she maintained a residence in the Bronx during 2002.

In September 2004, in response to USCIS's Notice of Intent to Revoke D-R-'s I-130 Petition on behalf of her husband, the couple submitted a statement, signed by both, stating that they were married in good faith, they live together, they are trying to make a good future together and have a family, they have rented an apartment from their brother-in-law, and were nervous when they were interviewed; and they requested another interview. In response to USCIS's doubts regarding the timing of their petition, they said that they were married on April 25, 2001 because of the deadline of Section 245(i) so they would "get protection" but that they were dating at that time. They also submitted six affidavits from acquaintances as character references and/or as confirmation that the couple resided at [REDACTED], including an affidavit from [REDACTED] the petitioner's brother-in-law, confirming that he lives at the same address as the couple at [REDACTED] and referring to the petitioner and his wife as an excellent and hard working couple.

Also relevant to a determination of whether the petitioner and D-R- resided together in the past are affidavits submitted in support of the couple's prior I-130 Petition and I-485 Application noted above. These prior submissions include three additional utility bills covering periods of service from March 11, 2002 to November 6, 2003; an automobile insurance bill for the period October 24, 2003 to April 24, 2004; a Citibank statement for the period from April 7 to May 6 2003 showing that the couple had a joint account; and a copy (unsigned) of the couple's joint income tax return, Form 1040EZ, for 2001. All of these documents provide the names of the petitioner and D-R- at their claimed prior address of [REDACTED] in Stamford.

On appeal, the petitioner, through counsel, submitted additional utility bills, insurance forms, and a copy of a U.S. Treasury check, all dated various months in the years 2001 through 2005, and all addressed to the couple at the residences where they claimed to have been living in Stamford.

Despite some discrepancies noted in the record, the preponderance of relevant evidence demonstrates that the petitioner resided with his spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. We, therefore, withdraw the director's finding that the petitioner failed to meet this requirement.

Battery or Extreme Cruelty

The petitioner does not provide a personal statement regarding any abuse he received from his spouse. Instead, in response to the director's NOID, the petitioner, through counsel, submitted ten duplicate affidavits from acquaintances attesting to the fact that they have known the petitioner for many years; that he and D-R- had a bona fide marriage and were living together at [REDACTED] in Stamford, Connecticut when they separated in February 2006; that D-R- would get drunk and insult and berate the petitioner and engage in "psychological abuse"; and that the petitioner has good moral character. These affidavits provide no indication of how or

where or when the affiants met the petitioner or became aware of the incidents they report. They contain the exact same language and were all signed on February 20, 2007. As the affiants could not have provided exact duplicate statements, and there is no indication as to which affiant, if any, provided the information, these statements lack credibility and are not evidence that the petitioner suffered any abuse from D-R-.

On appeal, the petitioner, through counsel, submits eleven duplicate affidavits. These affidavits are all signed on August 8, 2007, some by the same affiants who signed affidavits on February 20, 2007. The affidavits include the same information as provided on the prior affidavits but add dates and places and a few more incidents of alleged abuse, including that D-R- slapped the petitioner in the face on April 15, 2004 in the presence of a group of friends, including the affiant, and called the petitioner a derogatory name and threatened to kick him on separate occasions. As with the prior affidavits, these affidavits provide no indication of how or where or when the affiants met the petitioner. Again, as the affiants could not have provided exact duplicate statements, and there is no indication as to which affiant, if any, provided the information, these statements lack credibility and are not evidence that the petitioner suffered any abuse from D-R-.

In sum, the petitioner has not described any abuse by D-R-, and the affidavits submitted lack credibility. **No other evidence of abuse is included in the record.** Moreover, even if the affidavits were determined to be credible, they lack probative details and substantive information sufficient to establish that the petitioner's wife subjected him to battery or extreme cruelty as required under the Act.

Accordingly, the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his spouse during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. We, therefore, concur with the director's finding that the petitioner failed to satisfy this requirement.

Good Faith Entry into Marriage

In their joint statement submitted in September 2004 in response to the Form I-130 NOIR, the petitioner and his wife claimed to have married in good faith, to be residing together and trying to make a good future together, and that at the time of their marriage on April 25, 2001, they had been dating. The record also contains photographs as evidence of a formal wedding and additional photographs, submitted on appeal, of the couple together at various times and places, which, though undated, provide some evidence of shared experiences. Of more relevance however is the fact that in this case the record contains ample evidence of the petitioner's relationship with his spouse since the time the couple married in April 2001 until at least September 2004. As noted above, the record includes affidavits from acquaintances attesting to the couple's relationship from 2001 to 2006, proof of joint residence and commingling of funds during that time, joint utilities accounts, joint automobile insurance and life insurance naming the petitioner's wife as his beneficiary.

In the NOID, the director cited discrepancies noted during a USCIS interview with the couple in regards to D-R-'s Form I-130 Petition. Those discrepancies were not significant and are outweighed by the preponderance of the relevant evidence of record, which demonstrates that the petitioner entered into his marriage with D-R- in good faith.

Evidence of a good faith marriage includes proof that one spouse has been listed as the other's spouse on insurance policies, income tax forms, or bank accounts; evidence regarding a wedding ceremony, shared residence and experiences and affidavits of persons with personal knowledge of the relationship. 8 C.F.R. § 204.2(c)(2)(vii). The record in this case includes such evidence. Accordingly, the petitioner has demonstrated that he entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. We, therefore, withdraw the director's findings that the petitioner had failed to satisfy this requirement.

Conclusion

The petition will be denied for the above stated reason, that the petitioner has failed to establish that he was battered or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.