

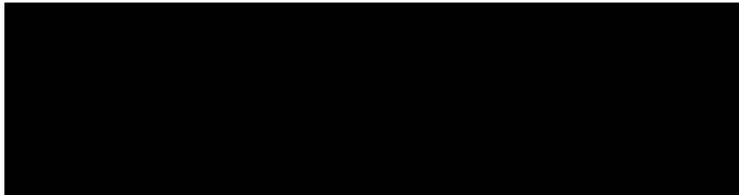
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services



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FILE:

EAC 05 151 52281

Office: VERMONT SERVICE CENTER

Date:

APR 03 2009

IN RE:



PETITION: Petition for Special 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 service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

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 petitioner filed the instant Form I-360 on May 2, 2005. The director denied the petition on December 12, 2005, on the basis of his determination that the petitioner had failed to establish that he has a qualifying relationship with a citizen of the United States; that he is eligible for immigrant classification as an immediate relative based upon that qualifying relationship; that he was subjected to battery and/or extreme cruelty by I-V-,¹ his United States citizen wife; that he is a person of good moral character; and that he entered into the marriage with I-V- in good faith. The petitioner appealed the director's decision to the AAO. In its July 24, 2006 decision, the AAO agreed with the director's analysis. However, although the AAO agreed with the director's reasoning, it remanded the petition to the director, on technical grounds, for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).²

The director issued the requisite NOID on December 4, 2006. Counsel responded to the director's NOID on January 25, 2007, and submitted additional evidence. The director denied the petition on November 30, 2007, and certified his decision to the AAO for review. In his denial, the director found, again, that the petitioner had failed to establish that he has a qualifying relationship with a citizen of the United States; that he is eligible for immigrant classification as an immediate relative based upon that qualifying relationship; that he was subjected to battery and/or extreme cruelty by I-V-; that he is a person of good moral character; and that he entered into the marriage with I-V- in good faith. Counsel submitted a supplemental brief and additional evidence on December 27, 2007.

As indicated previously, the same issues before the AAO when it issued its last decision are now again before the AAO. As the AAO found the evidence of record insufficient to establish the petitioner's eligibility in its July 24, 2006 decision, on certification the AAO will only consider the evidence submitted by the petitioner after its issuance of that decision. The following evidence has been submitted into the record since the AAO's July 24, 2006 decision:

- The petitioner's January 4, 2007 statement;
- The petitioner's January 12, 2007 statement;
- Counsel's January 24, 2007 response to the director's NOID;

¹ Name withheld to protect individual's identity.

² On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing of this petition on May 2, 2005.

- Counsel's undated brief, which was received at the AAO on December 27, 2007; Copies of seven photographs;
- A police clearance from the City of Chicago Department of Police, dated December 29, 2006; and
- A photocopy of a DVD.

Qualifying Relationship and Eligibility for Classification as an Immediate Relative

The petitioner stated on the Form I-360 that he and I-V- were married on October 4, 2003. As proof of his marriage to I-V-, the petitioner initially submitted a marriage certificate issued by a representative of the Muslim Community Center in Chicago, Illinois. In his August 17, 2005 request for additional evidence, the director informed the petitioner that in order for his marriage certificate to be considered valid for immigration purposes, it must have been registered with a civil authority from the location where the marriage took place. In response to the director's request, the petitioner submitted a copy of a marriage certificate that appears to have been issued by Cook County, Illinois. However, in his December 12, 2005 denial, the director noted discrepancies between the two marriage certificates. As noted by the director, the two documents contain conflicting dates on which the wedding occurred: the first document states that the wedding occurred on October 4, 2003, and the second document states that the wedding occurred on October 9, 2003. The director also noted that the marriage certificate that was purportedly issued by Cook County, Illinois appeared to have been altered. In its July 24, 2006 decision, the AAO agreed with the director's analysis, and instructed the director to request the original marriage certificate from Cook County, Illinois.

In his December 4, 2006 NOID, the director stated the following:

[Y]ou MUST submit an ORIGINAL Cook County marriage certificate for you and [I-V-] [emphasis in original].

Although counsel submitted an original marriage certificate from the Muslim Community Center, as well as a copy of a DVD which he states has a video of the wedding, he did not submit the requested original document from Cook County, Illinois.

In his January 4, 2007 statement, the petitioner states that after their religious marriage, he and I-V- went to the Cook County, Illinois courthouse to register the marriage. According to the petitioner, when he and I-V- went to the courthouse, they were given a marriage certificate. The petitioner states that, after they were given the marriage certificate, they were then told to register the marriage, and then apply for a marriage license. However, they were told that they could not both register the marriage and obtain a marriage license on the same day. The petitioner states that I-V- told him that she would take care of things, and that he never asked her if she had applied for the marriage license as he assumed that she had "applied for everything that was needed to register the marriage." The petitioner, therefore, did not submit the original version of the document from Cook County, Illinois that he had submitted when he filed the petition.

The director found the petitioner's explanation unconvincing. On certification, counsel contends that the petitioner has established "that a marriage license was applied for with the Cook County civil authority, but that it was not registered owing to the fact that he had relied upon his wife to register the same."

The AAO finds the assertions of counsel and the petitioner deficient. Counsel and the petitioner have now been placed on notice several times that, in order for the marriage certificate from the Muslim Community Center to be considered valid for immigration purposes, it must have been registered with a civil authority from the location where the marriage took place. The record does not indicate that such registration occurred. Nor does the DVD photocopy establish that the marriage certificate was registered with a civil authority.

However, and more importantly, by failing to submit an original copy of the marriage certificate issued by Cook County, Illinois, the petitioner failed to comply with the director's NOID. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). On this basis alone, the petition may not be approved. The document submitted by the petitioner, which is purportedly a marriage certificate issued by the Marriage Court of Cook County, states that, on October 9, 2003, the petitioner and I-V- were married by [REDACTED]. However, as noted by the director, the document appears to have been altered. The director's request for an original copy of this marriage certificate, which was directed by the AAO, was made so that USCIS may examine the original document in order to determine whether the petitioner submitted an altered document. Despite the director's specific request for the original document, the petitioner did not submit it.

The petitioner's testimony with regard to his trusting of I-V- to register the religious marriage with the proper civil authorities is irrelevant, if the document he submits from the Cook County Marriage Court is in fact a legitimate document. Again, according to that document the petitioner and I-V- were married in a civil ceremony by [REDACTED] on October 9, 2003.

The record, as it currently stands, fails to establish a qualifying marital relationship between the petitioner and I-V-. There is no evidence that their October 4, 2003 religious marriage was ever registered with a civil authority, and, without the original document, the AAO will not consider the document stating that he and I-V- were married in a civil ceremony on October 9, 2003. Further, the AAO notes that the petitioner's failure to submit an original marriage certificate from the Cook County Marriage Court with regard to his purported October 9, 2003 civil marriage to I-V-, despite having been placed on notice that the reason for the request was concern on the part of USCIS that the document may have been altered, raises serious questions with regard to the veracity of the petitioner's testimony. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The AAO concurs with the director's finding that the petitioner has failed to establish a qualifying relationship with I-V, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. Further, as the petitioner has not demonstrated a qualifying relationship as the spouse of a citizen of the United States pursuant to section 204(a)(1)(A)(iii) of the Act, he is ineligible for preference immigrant classification based on such a relationship, as required by section 201(b)(2)(A)(i) of the Act.

Battery or Extreme Cruelty

In its July 24, 2006 decision, the AAO noted considerable contrasts between the statements of the petitioner. For example, in his earliest statement, the petitioner did not indicate that any physical abuse had occurred. However, in his later statement, he stated that I-V- slapped him in the presence of his neighbor, ██████████. Ms. ██████████ testimony with regard to the abuse that the petitioner allegedly suffered also escalated from the time of the initial submission and the response to the director's request for additional evidence. In her earlier testimony, ██████████ did not mention witnessing I-V- slap the petitioner. In later testimony, she did. Citing to *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988), the AAO stated that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and that any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies.

Neither the petitioner's January 4, 2007 statement nor his January 12, 2007 statement clarify the inconsistencies noted by the AAO, nor do they account for the gradual escalation in the testimony of both the petitioner and ██████████ with regard to the abuse that the petitioner allegedly suffered. They do not resolve the deficiencies identified by the AAO in its July 24, 2006 decision. Although counsel references previously submitted documentation, that documentation has already been found insufficient. Again, the previous decisions of the AAO and the director are part of the record, and their contents need not be repeated here. The petitioner has failed to establish that I-V- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

In its July 24, 2006 decision, the AAO concurred with the director's finding that, because the petitioner failed to submit a police clearance or state-issued criminal background check indicating that the name '██████████' had been searched, the petitioner had failed to establish that he is a person of good moral character. The AAO specifically found the petitioner's father's statement that the name '██████████' was a nickname insufficient. The AAO found that, regardless of whether it was a nickname or not, because the petitioner had used the name '██████████' on several documents, he needed to submit an additional police clearance or state-issued criminal background check of that name.

However, counsel and the petitioner have elected to ignore the AAO's determination. The December 29, 2006 police clearance that the petitioner submitted in response to the director's NOID does not indicate that the name '██████████' was searched. Counsel and the petitioner have now been

placed on notice several times that, without a police clearance or state-issued criminal background check indicating that the name ' [REDACTED] had also been searched, USCIS would not be able to enter a finding that the petitioner is a person of good moral character. Counsel and the petitioner, however, have elected not to respond to such notice. Accordingly, the petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Good Faith Entry into Marriage

In its July 24, 2006 decision, the AAO discounted the evidence submitted by the petitioner in support of his assertion that he married I-V- in good faith. On certification, as noted previously, the petitioner has submitted seven additional photographs and a photocopy of a DVD. As noted by the AAO in 2006, photographs are evidence that the petitioner and I-V- were together at the same place and time; they are not evidence of a good faith marriage. Nor is a photocopy of a DVD evidence of a good faith marriage. The petitioner's additional statements offer no evidence to overcome the decisions of the director and the AAO.

In his brief, counsel also points to the petitioner's K-1 visa as evidence of a good faith marriage. The AAO disagrees. Approval of a Form I-129F, Petition for Alien Fiance(e), under section 214(d) of the Act is not prima facie evidence of the beneficiary's good-faith entry into the subsequent marriage under section 204(a)(1)(A)(iii) of the Act. The statutory and regulatory framework for fiancé(e) petitions significantly differs from the requirement that self-petitioners under section 204(a)(1)(A)(iii) of the Act demonstrate that they "entered into" the marriage with the abusive U.S. citizen "in good faith." The U.S. citizen petitioner bears the burden of proof in fiancé(e) cases to establish prospectively that the petitioner and beneficiary intend to and are able and willing to enter a valid marriage. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). The corresponding regulation does not, however, define what constitutes a "bona fide intention to marry" under section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). In contrast, for self-petitions under section 204(a)(1)(A)(iii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith and the regulation specifically defines the term "good faith marriage" and what types of evidence will suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). Hence, the fact that a self-petitioner was the beneficiary of an approved Form I-129F filed by his or her spouse will not establish that the alien actually entered into the marriage in good faith.

Moreover, while evidence submitted with a Form I-129F petition filed on the alien's behalf may be relevant to a determination of the alien's good faith entry into the subsequent marriage, reliance on such evidence alone is unwarranted. In such instances, the U.S. citizen petitioner would have borne the burden of proof in the fiancé(e) case and reliance on the abusive spouse's representations of the alien's intentions at the time of their engagement is of little probative value. The petitioner has failed to demonstrate that he entered into marriage with I-V- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to establish that he has a qualifying relationship with a citizen of the United States; that he is eligible for immigrant classification as an immediate relative based upon that qualifying relationship; that he was subjected to battery and/or extreme cruelty by I-V-; that he is a person of good moral character; and that he entered into marriage with I-V- in good faith. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and his petition must be denied. The director's decision will be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's November 30, 2007 decision is affirmed. The petition is denied.