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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
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Services



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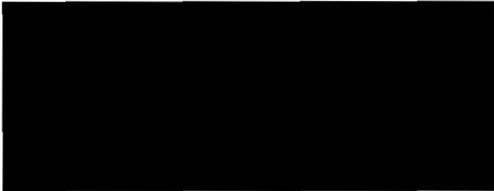
Office: VERMONT SERVICE CENTER

Date: **APR 03 2009**

IN RE: Petitioner: [Redacted]

PETITION: Petition for Immigrant Battered 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.

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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

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 director denied the petition on March 3, 2008, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty by his spouse.

On appeal, counsel submits a brief.

We concur with the director's determination that the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his spouse, J-W-¹. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii). In addition, to the petitioner's failure to establish that he was subjected to battery or extreme cruelty perpetrated by J-W-, we also find the record insufficient to establish that the petitioner resided with J-W- and that he entered into the marriage in good faith.

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 also explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

¹ Name withheld to protect individual's identity

(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 explained 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 matter provides the following pertinent facts and procedural history. The petitioner is a citizen of Trinidad who married J-W-, a United States citizen, on November 7, 2005 in the State of Florida. The petitioner filed a Form I-360, *Petition for Amerasian, Widow(er) or Special Immigrant*, on March 9, 2007; he did not indicate on the Form I-360 the length of time or where he resided with J-W-. The director in this matter issued an RFE on October 10, 2007. The petitioner provided a response through counsel. Upon review of the evidence submitted, the director denied the petition on March 3, 2008 and counsel timely appealed.

On appeal, counsel disagrees with the director's determination that the petitioner was not subjected to abuse and asserts that an eyewitness account of physical abuse is not a mandatory requirement to establish eligibility for this benefit. Counsel asserts that it is inconsistent for the director to find that the petitioner is credible in establishing the other eligibility grounds and yet not credible regarding his statements of abuse perpetrated by J-W-.

Battery or Extreme Cruelty

The record includes the petitioner's personal statements dated February 26, 2007 and December 18, 2007, as well as affidavits signed by _____ and _____. In the petitioner's initial

statement dated February 26, 2007, the petitioner stated: in the first few months of 2006 he noticed that J-W- smelled of alcohol; when he confronted J-W- about the use of alcohol she would yell at him; and that when he told her she appeared to be slipping back into her negative past, “she swung a wine glass towards [him],” “hauled blows on [him],” “spewed all kinds of obscenities while at the same time punching [him],” and told him she would have him deported. The petitioner added that after the incident with the wine glass, J-W- asked him for money and when he refused to give any money to her, she insulted him. The petitioner indicated that in the summer of 2006 “things had badly deteriorated in the home, as [J-W-] resorted to full name calling at the slightest opportunity” and that J-W- would also throw household items toward him when he tried to take away bottles of wine. The petitioner added that J-W- threatened that if he did not give her the money she had requested she would withdraw the Form I-130 petition she had filed on his behalf and that when he refused she struck him with such viciousness that he thought he was going to pass out. The petitioner noted after this incident, J-W- left the house for about one week. The petitioner reported that by late fall he told J-W- he was not prepared to continue “like this” and J-W- sobered up for about a week. The petitioner stated: in October he found J-W- drinking and smoking what he thought was “weed” and when he confronted her she poured a drink all over his face and told him to get a life. The petitioner stated that J-W-’s behavior made him feel humiliated and he “could not tell [his] friends what was going on at home because [he] was just ashamed.” The petitioner reported that J-W- moved out of the house shortly before the Christmas holiday.

In the petitioner’s December 18, 2007 statement, the petitioner reiterated that he suffered degrading verbal abuse and had to spend countless night on the couch because J-W- was too drunk and irritable; that she would use racial slurs against him; that her demands for money made him feel exploited and abused; and that she “poured wine on [him], spat on [him], and [she] punched [him] on several occasions most time when she was drunk.” The petitioner noted that in addition to the “physical altercation and bruises [he] suffered” he endured many race-laced verbal insults that he cannot even repeat. The petitioner reiterated that he has been humiliated and believes that J-W- exploited him to extort money to continue her lifestyle with drugs and alcohol. Counsel for the petitioner submits a copy of J-W-’s arrest record in Palm Beach County showing J-W-’s latest arrests occurring in August 2006 for forgery and October 2006 for grand theft.

The AAO has also reviewed the two affidavits submitted on the petitioner’s behalf. In the December 2, 2007 affidavit signed by [REDACTED], Mr. [REDACTED] declared: that the petitioner would speak to him about J-W-’s troubled past; that he met J-W- about two months into the marriage and noticed that J-W- was a heavy drinker and had a rude and obnoxious character; that J-W- stole from the petitioner; and at times she “got physical and verbally abusive towards him.” In the April 3, 2008 affidavit signed by [REDACTED] submitted for the first time on appeal, [REDACTED] declares that he was present one night when a “visibly or drunk looking [J-W-] lashed out at [the petitioner] for what she claimed to be an intrusion into her ‘business’,” and that “she regned [sic] blows on him and cursed him with offensive racial slurs aimed at his ethnicity.” [REDACTED] notes that the petitioner out of embarrassment laughed it off, but that the affiant could tell that the petitioner felt really humiliated and disappointed that this incident even occurred let alone, in the affiant’s presence.

Upon review of the record, the AAO concurs with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The AAO has reviewed the petitioner's statements regarding the alleged battery perpetrated by his wife, involving punching, striking with viciousness, spitting, and throwing things at him and pouring a drink on him. Although in the petitioner's December 18, 2007 personal statement, the petitioner references bruising, the petitioner does not provide any independent evidence of bruising. The petitioner does not provide any probative detail about the incidents of punching, striking, and throwing things; rather his statements are general and conclusory. There is no evidence in the record that the petitioner feared for his life or physical injury. There are no medical records, court documents, or police reports that support the petitioner's claim that he was subjected to battery. The only item in the record in support of the petitioner's claim is [REDACTED] affidavit, submitted for the first time on appeal. Although [REDACTED] declares that on one occasion he witnessed J-W- reigning blows on the petitioner, [REDACTED] statement does not indicate that he believed the matter should involve the police or any actions on his part. [REDACTED] affidavit does not provide the circumstances of this incident, other than to acknowledge that J-W- appeared drunk. The lack of the detail regarding this particular incident, the fact that the petitioner "laughed it off," and the similarity between the petitioner's general description and that of the affiant casts doubt on the legitimacy of or seriousness of this incident. The record is thus insufficient to establish that the petitioner suffered battery perpetrated by his spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO also does not find that J-W- subjected the petitioner to extreme cruelty. The AAO acknowledges that the petitioner's marriage involved turmoil and emotional upset; however, the petitioner's testimony and the general testimony provided on his behalf do not demonstrate that his wife's behavior rose to the level of extreme cruelty. The petitioner does not provide a detailed chronological timeline of the abusive acts of his wife. The record includes only general statements that J-W- verbally abused him by name calling including racial slurs, threatened him with withdrawing the Form I-130 petition when he did not give her money, and lashing out at him. There is no definitive information in the record that the petitioner was subjected to abusive acts that 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. The record does not provide sufficient probative detail of the acts of J-W- over the time the couple claimed to be together to allow the AAO to ascertain that J-W-'s actions subjected the petitioner to psychological, sexual abuse or exploitation or were part of an overall pattern of violence. The record does not include specific details regarding the time of any threats or coercive actions, the number or content of threats or coercive actions, or that the petitioner perceived any of the threats or other actions against him as serious enough to involve the actions of the police. The two affidavits of the petitioner's friends also provide only brief general statements without definitive detail regarding when or how any verbal or physically aggressive behavior occurred.

The AAO has also reviewed the November 23, 2007 letter signed by

as the

Supervisor of [REDACTED] who indicated that the petitioner and J-W- had been members of the organization since August 2005 and that the petitioner's demeanor had changed upon undergoing the struggle with J-W-'s alcohol addiction. The letter-writer also noted that the petitioner had sought counseling through the organization in an effort to cope with "these happenings." The AAO finds that the letter-writer does not offer chronological, clinical, or substantive details of the petitioner's wife's alleged abuse which demonstrate J-W-'s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. The general statement that the petitioner sought counseling does not establish that the petitioner suffered psychological trauma resulting directly from his wife's behavior.

As discussed above, the testimony regarding the petitioner's spouse's non-physical behavior does not indicate that her actions were coercive, threatened actual harm, or were aimed at ensuring dominance or control over the petitioner. The record does not evidence that the actions of the petitioner's wife resulted in the petitioner's psychological trauma any more than that of any broken marriage between two different individuals with different personalities and moral codes. The claims made by the petitioner and the general statements submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty. Upon review of the totality of the record, the relevant evidence fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Upon remand, the director should also address the significant deficiencies in the record regarding the petitioner's joint residence with J-W- and the petitioner's good faith in entering the marriage.

Residence

The petitioner has submitted utility bills dated in 2007 addressed to the petitioner in care of the petitioner and J-W-, and bank statements dated in 2007 listing the petitioner on the account and J-W- as POD on the account. The petitioner does not identify on the Form I-360 when he and J-W- resided together. The petitioner references living together prior to their marriage and his personal statements appear to indicate that his spouse left him at Christmas in 2006. It is not clear why the petitioner would continue to include J-W- on his accounts when they were no longer living together. The AAO observes, in addition, that adding a name to an account does not establish that the individual lived at the particular address. The utility bills in this matter do not substantiate and do not provide an accurate picture of when J-W- resided at the claimed joint residence. The general statements of the two individuals who provide affidavits on the petitioner's behalf do not include detailed information noting where the petitioner and J-W- allegedly lived. The affiants do not describe the residence or provide any probative information that demonstrates that the couple resided together. General conclusory statements that do not provide some chronological timeline and some detail of the claimed joint residence are insufficient to establish residence in this matter. Although the November 23, 2007 letter signed by [REDACTED] as the Supervisor of [REDACTED]

██████████ indicates that the petitioner and J-W- lived at a particular address, the letter-writer does not substantiate how his knowledge was obtained or that he had personal knowledge of the couple's joint residence.

The record in this matter does not establish that the petitioner and M-L- resided together. For this reason, the petition is not approvable.

Good Faith Marriage

The AAO has reviewed the petitioner's personal statements and the affidavits submitted on the petitioner's behalf and finds that these statements are insufficient to establish the petitioner's intent upon entering the marriage. The petitioner has failed to submit any of the suggested independent evidence that would support a finding that the petitioner entered into the relationship in good faith, such as insurance policies, property leases, certified tax forms, joint bank accounts, medical, police, or court documents. The record does not include any indicia of a couple who married with the intent of establishing a life together. The petitioner's personal statement although referencing how the couple met and their subsequent dating does not provide the required detail necessary to allow the evaluation of the petitioner's intent upon entering the marriage. There is no chronological timeline, no substantive information on the kind of help the petitioner tried to obtain for J-W-, and no substantive information on the interactions of the couple except as it relates to the alleged abuse.

The general statements made by the affiants who submitted affidavits on the petitioner's behalf likewise fail to assist in establishing the petitioner's good faith in entering into the marriage. The affidavits do not provide the probative details necessary regarding the affiants' observations sufficient to establish the petitioner's good faith entry into the marriage. The affidavits lack information regarding the petitioner and J-W-'s initial courtship and subsequent interactions and the circumstances of the subsequent interactions to establish the *bona fides* of the marriage. For this additional reason, the petition is not approvable.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.