

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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**

B3

APR 21 2009

FILE:

EAC 06 258 50462

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

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:

SELF-REPRESENTED

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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.

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 because the petitioner did not establish that he resided with his wife and that he married her in good faith.

On appeal, the petitioner submits a statement and additional evidence, including a bank statement, a copy of an insurance policy listing the petitioner's wife as the insured, and copies of documents previously submitted.

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 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 further 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.

* * *

(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 filed 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.

* * *

(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.

* * *

(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 Ghana who was admitted into the United States on October 19, 2003 as a B-2 nonimmigrant visitor for pleasure. On March 17, 2006, the petitioner married G-R¹, a U.S. citizen, in New York City.

The petitioner filed the instant Form I-360 on September 13, 2006 along with the Form I-485, Application to Register Permanent Residence or Adjust Status. On March 29, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residency, good-faith entry into the marriage and battery or extreme cruelty. The petitioner requested additional time to respond. The director granted an extension to September 25, 2007. On July 10, 2007, the director denied the I-360 petition because the petitioner did not establish that he resided with his wife and that he married her in good faith. The director also denied the I-485 application, based on the denial of the I-360 petition. The petitioner timely appealed the denial of the I-360 petition.

¹ Name withheld to protect individual's identity.

On appeal, the petitioner states, in part, that is beyond his control that [REDACTED] did not include in his affidavit the dates of his visits to the petitioner and his wife. The petitioner also states that, although he is unable to explain his wife's inconsistencies regarding her various addresses, he entered "into genuine marriage for mutual cohabitation" and "with good intent."

Joint Residence

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

- The petitioner's affidavits dated July 31, 2006; April 9, 2007 and July 26, 2007 (the latter submitted on appeal);
- The petitioner's Form G-325A, Biographic Information, which he signed on September 7, 2006;
- A copy of an application for life insurance, signed by the petitioner's wife on June 13, 2006;
- A copy of a Master Account Agreement from the Washington Mutual Bank, signed by the petitioner and his wife, reflecting December 15, 2006 as the "date opened";
- A copy of an Affidavit of Personal Service of Final Order of Protection, served on the petitioner's wife on March 12, 2007;
- A copy of the petitioner's Order of Protection, dated March 9, 2007;
- An affidavit from [REDACTED], dated July 31, 2006; and
- An affidavit from [REDACTED], dated April 9, 2007.

On the Form I-360, at Page 3, Part 7. Section B., the petitioner left blank the dates that he resided with his wife. In his July 31, 2006 affidavit, the petitioner states that he married G-R- on March 17, 2006 and they lived together in the Bronx at [REDACTED]. The petitioner also states that a couple of weeks after their marriage, G-R- starting going out at night alone and that she would arrive home at midnight smelling heavily of alcohol. The petitioner states that on June 19, 2006, he left his home after his wife smacked him, pulled his mouth, and scratched his upper lip, and that he stayed with his cousin for a week. The petitioner also states that on June 27, 2006, he resumed living with his wife after he and his cousin met with his wife and resolved their issues. The petitioner states that on July 11, 2006, he went back to his cousin's house after his wife kicked him, smacked him in the face, called him names, and threatened him, and that on July 12, 2006, he returned home to reside with his wife. The petitioner states that on July 28, 2006, he finally vacated his marital home and went to live with his cousin at [REDACTED] in the Bronx.

The petitioner's April 9, 2007 affidavit is identical to his July 31, 2006 affidavit through the first full paragraph of the fifth page. The petitioner then adds the following: in October 2006, the petitioner's wife joined him at his cousin's apartment because she could not pay the rent and other bills; the

² It is noted that this affiant, who identifies himself as the petitioner's friend and fellow national of Ghana, has the same surname as the petitioner's first wife, [REDACTED]

petitioner changed his "mailing/correspondence address" to: [REDACTED] in Jamaica, New York "so that she could not have any contact with my letters"; and in March 2007, the petitioner reported his wife to family court in the Bronx for an amicable settlement. The petitioner states, "Consequently, she has vacated my room and I am at least free from her harassments for now, thanks to a court order."

In an affidavit dated July 31, 2006, [REDACTED] states, in part, that he lives at [REDACTED] in the Bronx, and that his is the petitioner's cousin. [REDACTED] also states the petitioner and his wife lived together at [REDACTED] in the Bronx, and that on June 19, 2006, the petitioner went to his apartment and stayed for a week until June 27, 2006, when the petitioner resumed living with his wife at the "[REDACTED]" address. [REDACTED] states that on July 11, 2006, the petitioner spent the night at his apartment, and on July 28, 2006, the petitioner returned with most of his belongings.

In an affidavit dated April 9, 2007, [REDACTED] states, in part, that the petitioner and G-R- once lived together at the "[REDACTED]" address, and now they are both living at [REDACTED] apartment at the "[REDACTED]" address. [REDACTED] explains that on July 29, 2006, the petitioner moved to his cousin's [REDACTED] apartment and that in October 2006, the petitioner's wife also moved to the same apartment because she could not pay the rent and other bills by herself.

The record contains inconsistencies in the joint addresses claimed by the petitioner. The petitioner's explanation on appeal that the inconsistent information that appears in the record is out of his control, is equivocal and does not resolve the inconsistencies. For example, in his April 9, 2007 affidavit, the petitioner states that in October 2006, G-R- joined him at his cousin's apartment at the "[REDACTED]" address because she could not pay the rent and other bills. However, on the "Master Account Agreement" from the Washington Mutual Bank, reflecting December 15, 2006 as the "date opened", G-R-'s address is listed as: [REDACTED], in the Bronx. Moreover, the petitioner's claim in his July 31, 2006 affidavit that he suffered "cruel and [inhumane] treatment" from G-R- detracts from the credibility of his claim in his April 9, 2007 affidavit that he allowed G-R- to join him at his cousin's apartment in October 2006 because she could not pay her bills. In addition, in the April 9, 2007 affidavit from [REDACTED] states that the petitioner and G-R- are both living at [REDACTED] apartment at the "[REDACTED]." address. This is inconsistent with the information reflected on the "Affidavit of Personal Service of Final Order of Protection" indicating that G-R- was personally served the Order of Protection on March 12, 2007 at the following address: [REDACTED] Concourse, in the Bronx. Moreover, on the petitioner's fingerprint chart that was processed by the New York Police Department on February 28, 2007, the petitioner's address is reflected as: [REDACTED] Jamaica, New York. The petitioner has not provided any evidence in support of his assertion in his April 9, 2007 affidavit that he uses the "[REDACTED]" address only as a "mailing/correspondence address." Moreover, the petitioner lists the "[REDACTED]." address as his present address on the Form G-325, Biographic Information, which he signed on September 7, 2006. The record contains no explanation for these inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to

where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. at 591 (BIA 1988). While the petitioner is not required to have lived with his wife for any specific amount of time, the unresolved inconsistencies regarding the claimed joint addresses detract from the credibility of his testimony.

On appeal, the petitioner submits an insurance policy, dated August 17, 2006, signed by G-R-, reflecting G-R-'s address as: [REDACTED] Bronx, New York. The petitioner, however, states in his April 9, 2007 affidavit that G-R- did not move to the "[REDACTED]" address until October 2006 "because she could not pay the rent and other bills." Again, the record contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. at 591 (BIA 1988). Again, while the petitioner is not required to have lived with his wife for any specific amount of time, the unresolved inconsistencies regarding the claimed joint addresses detract from the credibility of his testimony.

Although requested by the director, the petitioner has not submitted any credible evidence, such as joint leases, mortgages, rental agreements, utility invoices, or financial statements listing a common address for the petitioner and G-R-. The documentation in the record pertaining to the petitioner's alleged residence, including the affidavits, the life insurance policy, the bank statement, and the Order of Protection, all contain unresolved discrepancies. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In his July 31, 2006 and April 9, 2007 affidavits, the petitioner states that he and G-R- married on March 17, 2006, but he does not describe how he met G-R-, their courtship, decision to marry, their wedding or any of their shared experiences, apart from the alleged abuse. The photographs of the petitioner and G-R- confirm that they were pictured together, but these documents alone do not establish the petitioner's good-faith entry into the marriage. On appeal, the petitioner provided no further relevant information.

On appeal, the petitioner states that he was "optimistic about entering into genuine marriage for mutual cohabitation" and that he "entered into this marriage with good intent." However, as discussed in the preceding section, the documentation in the record pertaining to the petitioner's alleged residence contains unresolved discrepancies.

The petitioner is not required to submit preferred primary or secondary evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the petitioner has submitted documents with unresolved inconsistencies and discrepancies. Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding how he met his wife, their courtship, decision to marry, wedding, and shared residences and experiences, significantly detracts from the credibility of his claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

We disagree with the director's decision that the present record establishes that the petitioner was eligible for immediate relative classification based on a qualifying relationship as the spouse of a U.S. citizen and that he was eligible for classification based upon that relationship. In this matter, the petitioner submitted a copy of the dissolution of his Ghanaian customary marriage to [REDACTED]

³ A review of *Matter of Francis Kodwo*, 24 I&N Dec. 479 (BIA 2008)(citing *Matter of Kumah*, 19 I&N Dec. 290 (BIA 1985), modified, and *Matter of DaBaase*, 16 I&N Dec. 39 (BIA 1976)) finds that, while the desirable proper documentation continues to be a court decree, affidavits executed by heads of households may be sufficient under Ghanaian law to establish the dissolution of a customary tribal marriage as long as the affidavits meet specified evidentiary requirements. A person who seeks to prove the validity of a customary divorce must present evidence that establishes (1) the tribe to which he belongs, (2) the current customary divorce law of that tribe, and (3) the fact that the pertinent ceremonial procedures were followed. Affidavits must include all relevant information, including, but not limited to, the following: the full names and birth dates of the parties; the date of the customary marriage; the names, birth dates of, and custody agreement for any children born of the marriage; and a description of the tribal formalities that were observed, including the names of the tribal leaders, the name of the tribe, the place, and the type of divorce. In the affidavit submitted to establish the petitioner's divorce, the birth dates of the petitioner and his first spouse are missing. In addition, there is no mention of the tribal formalities that were observed in granting the divorce, or any information relating to the name of each party's tribe, the names of the tribal leaders, the customary divorce laws of each tribe, or the names, birth dates of, and custody agreement for children born of the marriage. As presented above, the facts do not establish the petitioner and [REDACTED] were divorced in accordance with the laws of Ghana. Therefore, at the time the instant petition was filed, the petitioner's marriage to G-R- would not be considered legal, as the petitioner would still have been married to [REDACTED]

We also disagree with the director's decision that the present record establishes that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. Again, the record contains inconsistent information regarding the petitioner's claim that he resided with his wife. Moreover, the carefully contrived descriptions and time sequences of the alleged abuse in the affidavits from the petitioner, [REDACTED] and [REDACTED] significantly detract from their credibility. For example, the petitioner states in his July 31, 2006 and April 9, 2007 affidavits: "I vacated my matrimonial home for the third time at 10:00pm on Friday, July 28, 2006." Regarding this incident, [REDACTED] states in

³ See footnote #2.

his July 31, 2006 affidavit: “[O]n Friday July 28, 2006 at 10:40pm I was surprised to welcome my cousin [the petitioner] back into my apartment with most of his personal belongings.” [REDACTED] states in his April 9, 2007 affidavit: “[I]t was no surprise to me when [the petitioner] rang me on Saturday July 29, 2006 that he had moved away from his matrimonial home and settled finally at his cousin’s apartment.” The petitioner also states in his April 9, 2007 affidavit: “[O]n Wednesday February 14, 2007 at 7:00pm [G-R-] slapped me in the face and succeeded in inflicting some bruises/cuts around the left side of my neck.” Regarding this incident, [REDACTED] states in his April 9, 2007 affidavit: “[O]n Wednesday, February 14, 2007 at about 9:30pm [the petitioner] called to inform me that his wife had slapped and scratched his neck.” Again, the affidavits are so contrived that some of the claims approach the absurd. For example, the petitioner states in his July 31, 2006 and April 9, 2007 affidavits: “[G-R-] got mad at me, slapped me in the face and pulled my nose between 9am and 10am.” Upon review of the record in its entirety, the petitioner fails to demonstrate that his wife subjected him to 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.

The present record fails to demonstrate the petitioner’s eligibility for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that U.S. Citizenship and Immigration Services (USCIS) must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.