

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:

[REDACTED]
EAC 07 061 50734

Office: VERMONT SERVICE CENTER

Date **APR 23 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:

[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.

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 January 7, 2008, determining: that the petitioner had not established that he entered into the qualifying relationship in good faith.

On appeal, counsel provides a statement on the Form I-290B and provides additional documentation.

The AAO concurs with the director's determination that the petitioner has not established that he entered into the qualifying relationship in good faith. Beyond the decision of the director, the AAO finds that the petitioner has not established that he resided with the claimed abusive spouse and has not established that he was subjected to battery or extreme cruelty. Nonetheless, this 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). Upon remand, the director must issue a NOID on the issues of abuse, residence, and good faith entry into the marriage.

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:

(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 native and citizen of Colombia. He married R-D-¹, a United States citizen on April 1, 2005, in the State of New York. The petitioner indicated on the Form I-360, that he resided with R-D- from February 2004 to July 2006. The director in this matter issued a request for further evidence (RFE) on January 10, 2007 to obtain evidence on the issue of the petitioner's good moral character. The director issued a second RFE on October 11, 2007 requesting evidence that the petitioner married his spouse in good faith. The director provided examples of the types of evidence that would assist in substantiating that the petitioner entered into the marriage in good faith and intended to establish a life with his spouse. The petitioner provided a response. Upon review of the evidence submitted, the director denied the petition on January 7, 2008 and counsel for the petitioner timely appealed.

On appeal, counsel for the petitioner asserts: that the police report, family offense petition, and the temporary restraining order are proof that these agencies considered the petitioner's allegations to have merit and would not have likely arisen in a marriage that was not *bona fide*; that it is unnecessary for the household bills to contain the names of both the petitioner and R-D- as the bills were issued to a common address; that the photographs show a wedding reception with many invited guest and that such a reception is not characteristic of a sham marriage; and that the couple had credit cards and a bank account. Counsel submits two additional affidavits and a copy of an undated lease

¹ Name withheld to protect the individual's identity.

issued for the period of September 1, 2005 to September 1, 2006 allegedly signed by both the petitioner and R-D-.

Good Faith Marriage

The AAO concurs with the director's decision that the petitioner has not established that he entered into the marriage in good faith. In an affidavit dated November 16, 2007, the petitioner declared: that he met R-D- at a gathering at a restaurant with friends in December 2003; that he was concerned she was involved with the father of one of her kids so he asked if they were together and she said she was single; that he gave R-D- his phone number and she called a week or so later; that they spoke on the phone and after a few weeks began to see each other on a regular basis; that in February 2004 he moved into her apartment on [REDACTED] that was occupied by R-D- and her three children; that they married in April 2005 before a justice of the peace and invited a few friends and relatives to their place after they married; and that their favorite pastime was to go to the malls to window shop and get something to eat or buy something they really liked.

The petitioner's testimonial evidence fails to support a finding that he entered into the marriage in good faith. The petitioner's statement is general and lacks the probative details necessary to show his intent. The record contains little information regarding the petitioner's courtship, the characteristics that made the petitioner believe he could establish a life together with R-D-, the couple's shared experiences over the more than two-year period of time the petitioner claimed they were together, or any information that would assist United States Citizenship and Immigration Services (USCIS) in ascertaining the *bona fides* of the marital relationship.

The director found that the photographs, the household bills, the bank letters, and the affidavits the petitioner submitted did not have sufficient evidentiary weight. The AAO concurs with the director's decision. The AAO finds that the photographs submitted show the couple at a party and show the petitioner with two children which establish that the couple knew one another and were together on occasion. The photographs do not establish the petitioner's intent upon entering the marriage. Similarly, the bills addressed to either the petitioner or to R-D- show that each individual received mail at the address but do not establish the petitioner's good faith intent in entering the marriage. Likewise, the bank letters show that an account was opened but the record does not include evidence demonstrating that the account was used by both parties on a regular basis to pay the joint bills they accrued upon living together and marrying. The affidavits submitted on the petitioner's behalf reference the petitioner's living arrangement with R-D- and their marriage but do not provide any detail regarding how the couple met or their interactions together, other than as it relates to the claimed abuse. The affiants do not describe any particular incidents where they witnessed the alleged *bona fides* of the couple's marital relationship. These documents are not probative in establishing the petitioner's good faith entry into the marriage.

Counsel asserts on appeal that the police report, family offense petition, and the temporary restraining order are proof that these agencies considered the petitioner's allegations to have merit and would

not have likely arisen in marriage that was not *bona fide*. The AAO disagrees. The police report, family offense petition, and the temporary restraining order are for events that took place at a residence other than the petitioner's claimed residence with R-D-; they show one incident of R-D-'s behavior. These documents do not delve into the couple's relationship and the ongoing interactions and circumstances of the petitioner's initial relationship with R-D, continuing through the time period when the petitioner claimed that he moved in with R-D-, and the time period of the actual marriage and the couple's life together. The documents deal with the claimed abuse and are not probative in this matter in establishing the petitioner's intent in entering into the marriage.

Counsel provides a photocopy of an undated lease for premises on [REDACTED] for a one-year period beginning September 1, 2005. The petitioner does not explain why the lease including his name is for a period of time subsequent to the date that he moved in with R-D-. The petitioner does not explain why the lease is now available and was not available for the director's review, although it was a document specifically requested by the director. The AAO observes, as well, that the alleged signature of R-D- does not correspond to her other signatures that are in the record. 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). The lease submitted in this matter is insufficient to establish the petitioner's intent upon entering the qualifying relationship and establishing that the petitioner intended the marriage to be *bona fide*.

The self-petitions under section 204(a)(1)(A)(iii) of the Act, require the alien to bear the burden of proof in establishing that he or she 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). The director informed the petitioner of the documents that would assist USCIS in determining the *bona fides* of the marriage. In this matter, the petitioner failed to provide credible evidence of a requisite good faith marriage. The AAO finds that the record: lacks probative information regarding the petitioner's initial relationship with R-D- and the subsequent interactions with R-D-; does not document the petitioner's reasons for marrying R-D-; and does not provide substantive evidence of the requisite intent that would establish that the petitioner's entry into the marriage was made in good faith. Accordingly, the AAO finds that the petitioner failed to establish that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Residence

Beyond the decision of the director, the petitioner has not established that he resided with R-D-. The documentation the petitioner submitted shows only that he received mail at the claimed marital address. The affidavits submitted on his behalf reference the petitioner's living arrangements with R-D- but do not provide information that these individuals actually witnessed the petitioner living at the common address. Neither the petitioner nor any of his affiants discuss the petitioner's residence

with his spouse, such as a description of the apartment and its location, their shared belongings or other information which demonstrates a joint residence. The only independent information regarding the petitioner's address is for the location the petitioner claimed he moved to after separating from his spouse. The record is without substantiating, credible evidence that the petitioner and R-D- established a joint residence together.

Battery or Extreme Cruelty

Also beyond the decision of the director, the petitioner has not established that he was subjected to battery or extreme cruelty by R-D-. In the petitioner's personal statement dated November 16, 2007, the petitioner claims: that at some point in time, R-D- began to verbally abuse him by calling him insulting names; that once when he criticized her cooking, she threw it at him; that she told him he could not sleep in her bed; that she demanded sex on the terms she wanted and kicked him out of bed when she did not want a relationship; and that in July 2006 he came home from work and found his clothes in bags outside the door. The petitioner states that he took the bags to friend's house in Brentwood and stayed with the friend. The petitioner reports that when R-D- found out where he was staying, she came to the house on August 29, 2006 and began to argue with him and that she scratched him and ripped his shirt. The petitioner also notes that she had a rock and threatened to throw the rock through his car window. The petitioner indicates that upon hearing the commotion, the landlord called the police who saw that the petitioner's shirt was ripped and that he had scratches and told him that he could obtain an order of protection against R-D-.

The record includes a photocopy of the police report which shows that the police report is for an incident on August 29, 2006 and includes a paragraph of illegible writing that appears to indicate that the petitioner told the police that his spouse came to his residence, ripped his shirt and scratched him and that he did not want his spouse arrested. The paragraph also contains the words "order of protection." In an August 29, 2006 statement in support of the temporary restraining order, the petitioner repeats the information regarding the August 29, 2006 incident and claims that he had been insulted, cursed at, and maltreated by his wife of 16 months, that she had repeatedly hit him, punched him on his arms and upper body, and that the couple separated on or about July 8, 2006. The record also contains a copy of a "check the box" pro forma temporary restraining order issued on August 29, 2006 to remain in effect for one year. The record further includes a one-page counseling report dated November 13, 2007 that shows: the petitioner attended 12 sessions of counseling from October 3, 2006 to February 20, 2007; that the case was closed March 14, 2007; that the petitioner "had been able to break the silence and to understand that men can be victims of domestic violence;" and that the petitioner has developed a safety plan and had been made aware of different forms of domestic violence and the impact it has had on him.

The petitioner has also provided affidavits signed by [REDACTED] and [REDACTED]. Mr. [REDACTED] declared: that the petitioner and R-D- had many marital problems; that in August 2005 at his birthday party, R-D- became intoxicated and started taunting the petitioner and punching him about; and that at Thanksgiving in 2005, R-D- became

intoxicated, and R-D- slapped the petitioner in front of him and the petitioner had to leave the house. [REDACTED] declared: that the petitioner and R-D- had marital problems; that in December 2005 the petitioner's spouse became intoxicated and angry, yelled obscenities at the petitioner, slapped the petitioner on the face, and stormed out of the party. [REDACTED] declared: that R-D- would always cause trouble and the petitioner and R-D-'s fights were mostly about money. [REDACTED] declared: that R-D- was demanding and always wanted money to have plastic surgery and the petitioner would not give it to her; that one day at their house they had an argument and R-D- became upset and started yelling and cursing at the petitioner; and that probably one of the reasons for their separation was their fights about money.

The AAO has reviewed the petitioner's statement in support of the Form I-360 and observes that the petitioner indicates only verbal abuse, demands to have sex or refusal to allow the petitioner to sleep in the bed, and one instance of R-D- throwing food at him while he and R-D- were purportedly living together. He does not report any instances of battery except for a general statement that R-D- repeatedly hit him, punched him on his arms and on his upper body and the statement that she scratched him, ripped his clothes, and threatened his car with a rock, all in support of the temporary restraining order obtained after the couple separated. The affidavits submitted in support of the petitioner's Form I-360 also indicate generally that on occasions when R-D- became intoxicated at parties or get togethers, she yelled at the petitioner and slapped him on two different occasions. The AAO finds the lack of information in the petitioner's personal affidavit submitted in support of the Form I-360 regarding specific instances of battery is inconsistent with the affidavits submitted on his behalf reporting that he was slapped, as well as his general statement in support of the temporary restraining order. 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. Moreover, the general nature of the statements made on behalf of the petitioner and in his statement in support of the temporary restraining order do not provide sufficient relevant information so that USCIS may evaluate and ascertain the veracity of the statements made.

The petitioner has not provided evidence that any of these claimed instances of actions against him while he was living with R-D- were serious enough that he involved the police. The police report of the event that occurred August 29, 2006 after the petitioner separated from R-D- does not indicate clearly that R-D- scratched the petitioner and does not include information that R-D- threatened the petitioner or the petitioner's car with a rock. The information in the report is general and apparently is not serious enough for the petitioner to pursue the arrest of R-D-. In addition, although the petitioner obtained a temporary restraining order against R-D-, there is no evidence that he pursued a permanent restraining order or that one was granted. Upon review of the totality of the information in the record regarding the alleged battery the petitioner suffered, the AAO finds that the information is general and does not include probative evidence that the applicant feared for his life or physical injury. The record does not present consistent, credible evidence that establishes that the petitioner was subjected to battery perpetrated by his spouse.

The general nature of the information in the record regarding R-D's taunting, yelling, and cursing at the petitioner, as well as the R-D's demands for sex or refusal to allow him to share the bed, do not demonstrate that her behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The AAO acknowledges that the petitioner's marriage involved turmoil and emotional upset, but the petitioner does not include specific information regarding threats, physical abuse, or any details regarding the claimed threatening or controlling behavior of his spouse. R-D's taunting and cursing the petitioner when she was intoxicated while unkind, inconsiderate, and obnoxious, do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The record does not provide sufficient probative detail of the alleged acts of R-D to allow the AAO to ascertain that J-P's actions subjected the petitioner to psychological, sexual abuse or exploitation, or were part of an overall pattern of violence. The petitioner does not include specific details regarding the time of any threats or coercive actions, the number or content of threats of coercive actions, or any of the necessary information to determine that he was subjected to battery or extreme cruelty as defined in the regulation. 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 beliefs. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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. The petitioner has not sustained that burden.

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.