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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: FEB 11 2009
EAC 07 046 50058

IN RE: Petitioner: [Redacted]

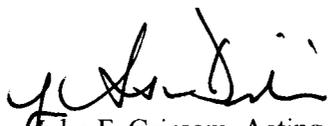
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[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.

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 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 entered into marriage with his U.S. citizen wife in good faith and that she battered or subjected him to extreme cruelty.

On appeal, counsel submits additional evidence.

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:

(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.

* * *

(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 case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ecuador who states on the Form I-360 that he entered the United States (U.S.) in July 1990. On December 13, 1996, the petitioner married A-R¹, a U.S. citizen, in New York. A-R-

¹ Name withheld to protect individual's identity.

subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on February 12, 1998 along with the petitioner's concurrently filed Form I-485, Application to Adjust Status.

The petitioner filed this Form I-360 on December 4, 2006. On December 12, 2006 and June 6, 2007, the director issued Requests for Evidence (RFEs) of, *inter alia*, the petitioner's marriage to A-R- in good faith and her battery or extreme cruelty. In response, the petitioner submitted an undated statement and other documents, which the director found insufficient to establish the petitioner's eligibility. On October 17, 2007, the director denied the petition for lack of the requisite good-faith entry into the marriage and battery or extreme cruelty.

On appeal, counsel requests our "personal consideration" for "humanitarian reasons." Counsel's statement and the evidence submitted on appeal fail to establish the petitioner's eligibility and we affirm the director's decision.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with A-R- in good faith:

- The petitioner's undated statement submitted below;
Statements of the petitioner's friends, [REDACTED], and the petitioner's brother, [REDACTED] submitted on appeal;
- Copies of 19 monthly rent receipts jointly made out to the petitioner and his wife and dated between April 1997 and May 2003;
- Partial copy of an apartment lease for February 1997 through January 1998, which lists the petitioner and his wife as tenants;
- Unsigned copy of the former couple's joint 1997 federal and New York state income tax returns and a copy of the New York state income tax refund check jointly payable to the petitioner and his wife;
- Partial copies of a March 25, 1997 cable bill and July 6, 1999 electricity bill jointly addressed to the petitioner and his wife; and
Photocopies of photographs of the petitioner and his wife on their wedding day.

In his undated statement, the petitioner describes meeting his wife in 1996 at a dance club. The petitioner states that he was happy with A-R-, they "had fun together," and they got married in December 1996. The petitioner explains that the former couple lived with his brother in New York. The petitioner does not further describe the former couple's courtship, wedding, shared residence and experiences, apart from the alleged abuse. The petitioner's testimony is insufficient to establish his good faith in entering the marriage.

The statements of the petitioner's brother and friends also fail to provide probative information

sufficient to establish the petitioner's claim. The petitioner's brother states that he lived with the petitioner until 2005, but he does not state that the petitioner's wife also lived with them. The petitioner's brother briefly describes A-R-'s maltreatment of the petitioner, but he does not discuss their marital relationship or the petitioner's intentions in entering the marriage. [REDACTED] and [REDACTED] only discuss A-R-'s maltreatment of the petitioner and they also provide no insight into the petitioner's good faith in entering the marriage. [REDACTED] states that he lived next door to the petitioner, but he also only describes the alleged abuse and provides no information relevant to the petitioner's intentions in entering the marriage.

The remaining, relevant evidence also fails to establish the petitioner's claim. The rent receipts and partial copy of the lease indicate that the petitioner and his wife resided together, but they do not demonstrate that the petitioner entered into their marriage in good faith. The 1997 tax returns are unsigned and the petitioner submitted no evidence that they were actually filed with the Internal Revenue Service or New York State. The 1998 refund check shows that the petitioner and his wife jointly filed a New York state income tax return for one year during their ten-year marriage. The single cable bill and one electricity bill are insufficient to show that the petitioner and his wife shared utility accounts for any significant period of time. Finally, the photographs show only that the petitioner and his wife were pictured together on one occasion.

The preponderance of the evidence does not 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.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that A-R- battered and subjected him to extreme cruelty:

- The petitioner's undated statement submitted below; and
- Statements of the petitioner's friends, [REDACTED], and the petitioner's brother, [REDACTED], submitted on appeal.

The petitioner states that after their marriage, he found out that his wife was using drugs and that she threatened him with deportation if he did not give her all his money. The petitioner explains that beginning in 1997, his wife left and returned numerous times until 2006, when he "decided it was enough abuse from her part." The petitioner states, "I can not tell you how she abused [sic] but to tell you the truth, she humiliated me and hit me very hard almost every day." The petitioner explains that he did not report his wife's actions to the police because he was afraid and he thought that no one would believe him. The petitioner does not describe any incident of abuse in detail and his brief statements are insufficient to establish the requisite battery or extreme cruelty.

The petitioner's brother and friends also fail to provide detailed and probative information sufficient to establish the petitioner's claim. The petitioner's brother states that he once saw A-R- hit the petitioner

on his head with her shoe, but the petitioner himself does not mention this incident. The petitioner's brother further states that A-R- took all of the petitioner's money when the petitioner was sleeping, but he does indicate that he witnessed this incident. [REDACTED] briefly states that the petitioner's wife threatened him with deportation and humiliated him in public when he did not give her money, but [REDACTED] does not describe any incident in detail or otherwise indicate that she ever witnessed the abuse. [REDACTED] states that the petitioner's wife threatened to "call Immigration" when he did not give her money, but she also does not describe any incident in detail or indicate that she ever witnessed the abuse. [REDACTED] states that the petitioner's wife "treated him so bad" if he did not give her money for her alcohol and drug addictions, but [REDACTED] also fails to describe any incident of abuse in detail.

The testimony of the petitioner, his brother and friends fails to provide detailed, substantive information sufficient to demonstrate that A-R- battered or subjected the petitioner to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that he entered into marriage with his wife in good faith and that she subjected him to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.