

data deleted to
prevent clearly unwarranted
invasion of personal privacy



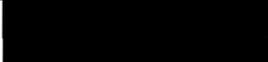
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 23 2009

EAC 05 078 52566

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)

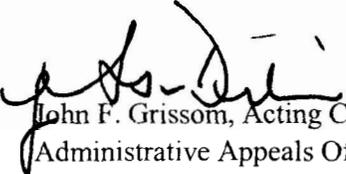
ON BEHALF OF PETITIONER:



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, 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 Immigration and Nationality Act (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.

On August 7, 2007, the director denied the petition on two grounds. The director found that the petitioner failed to establish that he had been subjected to battery or extreme cruelty perpetrated by his spouse. The director also found that the petitioner was subject to section 204(c) of the Act which precludes the approval of any immigrant petition if the alien has previously sought to be accorded immediate relative status as the spouse of a United States citizen by reason of a marriage determined to have been entered into for the purpose of evading the immigration laws; thus the petition could not be approved.

On appeal, counsel submits the petitioner's statement wherein the petitioner asserts that he had established that he entered into his prior marriage in good faith and that he has been a victim of extreme cruelty perpetrated by his spouse. The petitioner further asserts that the decision was prejudicial because he is male.

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 also explained 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.

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.

* * *

(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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Dominican Republic. He married L-L-¹ a United States citizen (USC), on March 13, 1992. On April 28, 1992, L-L- filed a Form I-130, Petition to Classify the Status of Alien Relative for Issuance of Immigrant Visa, on behalf of the beneficiary which was denied September 16, 1993. L-L- filed a second Form I-130 on behalf of the beneficiary on March 31, 1994 which was subsequently denied on April 26, 1996. The petitioner and L-L- divorced on

¹ Name withheld to protect individual's identity.

March 6, 1998. The record includes two marriage certificates showing that the petitioner married A-A-L-;² one marriage certificate is dated May 28, 1998 and a second marriage certificate is dated September 26, 1999. The record also includes the birth certificate of the couple's child born February 16, 2002 in Queens, New York. A-A-L- filed a Form I-130 on behalf of the petitioner on August 7, 1998. The Form I-130 was denied on February 14, 2002 for failure to respond to the Notice of Intent to Deny (NOID) the Form I-130 petition. On November 4, 2004, A-A-L- filed a second Form I-130 on behalf of the petitioner and submitted a request to withdraw this Form I-130 petition to USCIS on February 28, 2005. The petitioner filed the instant Form I-360 on January 21, 2005. The director issued a NOID on July 6, 2005 noting that additional evidence was needed to establish the petitioner's good faith marriage to L-L- and thus that the petitioner was not precluded from seeking the approval of any immigrant petition. The director also notified the petitioner that additional evidence was necessary to establish that he had been subjected to battery or extreme cruelty by A-A-L-. The petitioner provided a response on August 12, 2005. As noted above, the director denied the petition on August 7, 2006, finding that the petitioner failed to establish that he had been subjected to battery or extreme cruelty perpetrated by his spouse and that he was not subject to section 204(c) of the Act which precludes the approval of any immigrant petition if the alien has previously sought to be accorded immediate relative status as the spouse of a United States citizen by reason of a marriage determined to have been entered into for the purpose of evading the immigration laws.

Battery or Extreme Cruelty

In a January 11, 2005 statement appended to the Form I-360 petition, the petitioner declared that since about 2002, A-A-L- verbally mistreated him causing him severe emotional stress. The petitioner reported that A-A-L- would insult him and call him names. The petitioner noted that he has a heart condition and recently had heart surgery. In his statement, he indicated that when he was released from the hospital, A-A-L- filed frivolous papers in Family Court against him to aggravate his heart condition, as well as staying "at home for several days to give me aggravation of my heart condition." In response to the director's NOID, the petitioner provided a statement notarized on July 26, 2005. The petitioner reported:

[A]fter a prolonged period of serious continuous verbal assault on me – [A-A-L-] tried to frivolously involve me in a Family proceeding the same day when I had been discharged from an [sic] Hospital surgery procedure. My present spouse attempted to file a frivolous petition of order of protection in Queens Family Court, but unsuccessfully, attempting to cause me an aggravation of my heart-condition, in order to compel me to allow her to take the sole custody of my son USC, so she could move him to Florida.

² A-A-L- is the claimed abuser in this matter. A-A-L- is also referred to in the petitioner's administrative record under a different name. A-A-L- was granted an official name change on December 10, 2002 by a civil court judge in Queens County, New York. Names are withheld to protect the individual's identity.

The petitioner provided a copy of an Order of Custody indicating that the petitioner had filed a petition on January 5, 2005 requesting an order awarding him visitation of the minor child born of the marriage. The June 30, 2005 Order of Custody, based on a stipulation agreement between the petitioner and A-A-L-, gave joint custody of the minor child to the petitioner and A-A-L-, but noted that the child would reside with his mother in Florida and that the petitioner would be allowed unsupervised weekend visits every three months. In the petitioner's personal statement, the petitioner further reported that A-A-L- lied about him to their neighbors, their friends, and his co-workers. The petitioner also submitted an affidavit, dated July 20, 2005 signed by his brother, [REDACTED]. The affiant stated that in the year 2002, he noticed a deep sadness and lack of emotional stability in the petitioner and that the petitioner told him that A-A-L- used to yell at him and threaten him with deportation even though she knew he had a predisposed heart condition.

The record also includes an assessment of the petitioner prepared by [REDACTED] licensed clinical social worker, on February 21, 2005. [REDACTED] notes the petitioner's statements that he experienced verbal abuse perpetrated by A-A-L- and that according to the petitioner "he became depressed which affected more his heart condition." [REDACTED] reports that despite the petitioner's medical condition and multiple stressors that he has encountered, the petitioner has been able to maintain a "poised attitude" and keep himself emotionally stable. [REDACTED] opines: "[m]any men in abusive relationships either do not realize that they are being abused or can not admit, even to themselves that a woman could abuse them" and that "[v]erbal as well as physical abuse by women is very common in domestic relationships." [REDACTED] further opines: "it is common that when a spouse is sponsoring the legal status of the other, the abusive spouse becomes more abusive and overly demanding towards the sponsored spouse."

The record further includes a statement by a cardiologist dated August 1, 2005 who indicates that the petitioner had heart surgery in November 2004 and notes that "[e]motional stress may have a negative effect upon him long term."

On appeal, the petitioner asserts that the denial decision is prejudicial because he is a male who suffered extreme domestic cruelty from his spouse. The petitioner notes again that he had open heart surgery and indicates he does not understand what more evidence USCIS wants. The petitioner suggests that the director has misinterpreted or miscalculated the evidence or has abused his discretion.

The record on appeal also includes a police report dated October 20, 2004 given by A-A-L- to the police stating that she has had problems with her husband for the past two years and that he verbally abuses her and bought a knife and threatened her with it. The record also includes a temporary order of protection dated December 14, 2004 ordering the petitioner to refrain from "assault, harassment ... or other criminal offence against A-A-L-."

The petitioner's assertions are not persuasive. The petitioner does not explicitly state or otherwise indicate that his wife subjected him to battery. Accordingly, the AAO will only discuss the

petitioner's claim of extreme cruelty. The record in this matter contains generalities regarding name calling and the petitioner's suspicion that A-A-L- attempted to aggravate his heart condition by causing him stress. This is not probative evidence of extreme cruelty as intended in the statute and set out in the regulation. The petitioner does not describe in probative detail any particular incidents where his wife threatened him with physical or mental injury. The AAO acknowledges the petitioner's general statements regarding name calling and verbal abuse. The AAO has also reviewed the affidavit of the petitioner's brother who reiterates what the petitioner told him but does not offer any independent knowledge of the extreme cruelty alleged by the petitioner. The petitioner does not provide definitive details regarding whether his wife's verbal abuse was constant, intermittent, or occasional. The petitioner does not provide definitive statements indicating that he felt fear or resignation in relation to the actions of A-A-L-. The record does not include specific details regarding the time of the name calling, the number of times he was subjected to the name calling, where the name calling took place, or that the petitioner perceived the actions of his wife as serious enough to involve the actions of the police. The petitioner does not provide sufficient details regarding the circumstances of his wife's actions. The petitioner does not provide more than his suspicion of his wife's intent to upset him when she knew he had a heart condition.

The AAO also finds the record regarding the identity of the perpetrator and victim in this matter unclear. The AAO notes that the petitioner's wife filed a police report and obtained a temporary restraining order against him. Although the temporary restraining order was not finalized and the record does not include evidence that the petitioner was arrested, the record exhibits the tribulations of a marriage in turmoil. The record in this matter does not provide sufficient probative detail of the acts of A-A-L- so that these acts can be examined and the AAO can ascertain that A-A-L-'s actions subjected the petitioner to psychological abuse or exploitation or were part of an overall pattern of violence, rather than the marital discord associated with a troubled marriage. As discussed above, the testimony regarding the petitioner's former 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. As such, the petitioner's claims do not rise 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 petitioner in this matter failed to describe in probative detail any specific threatening or controlling behavior of his wife. The record includes only general information regarding verbal abuse and no probative evidence that the applicant feared for his life or physical injury perpetrated by his wife. The record does not provide the necessary evidence showing that A-A-L-'s actions resulted in the petitioner's psychological or physical trauma. The AAO acknowledges the statement from the petitioner's cardiologist who notes that emotional stress may have a negative effect upon the petitioner long term. The cardiologist, however, does not offer a causal connection between the stress of the petitioner's broken marriage and his heart condition. The record does not include any independent information substantiating the petitioner's suspicion regarding the actions of his wife and his heart condition. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme

cruelty. The AAO does not accept suspected behavior as evidence of abuse that establishes eligibility for this benefit.

The AAO has reviewed the assessment prepared by [REDACTED] and observes that [REDACTED] acknowledged the petitioner's statements that his wife's verbal abuse caused his depression which affected his heart condition; however, although [REDACTED] notes the petitioner's belief, she does not provide a clinical evaluation connecting the petitioner's wife's actions to the petitioner's health condition. The AAO also finds that [REDACTED] has not provided a basis for her opinion that many men in abusive relationships are not aware they are being abused and that verbal and physical abuse by women is very common in domestic relationships. [REDACTED] offers no evidence of studies, surveys, or other substantiating information to support her opinion. Moreover, [REDACTED] fails to identify the petitioner as an individual who has suffered such abuse.

As observed above, the petitioner has not provided evidence that he has been subjected to extreme cruelty by his wife during their marriage. The petitioner's statements indicate that he was involved in a troubled marriage and may have suffered depression due, in part, to the troubled marriage. However, not all forms of marital discord rise to the level of battery or extreme cruelty as set forth in the regulation. The record in this matter is deficient in probative detail and does not establish that the petitioner suffered battery or extreme cruelty perpetrated by his wife. The fact that the petitioner is male does not negate the requirement that he establish that he has suffered battery or extreme cruelty perpetrated by his wife. **In this matter he has not done so. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.**

Section 204(c) of the Act

The approval of this petition is also barred pursuant to section 204(c) of the Act due to the agency's prior determination that the petitioner did not enter into marriage with his wife, L-L- in good faith but to evade United States immigration laws.

Section 204(c) of the Act states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or
- (2) the [Secretary of Homeland Security] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The corresponding regulation at 8 C.F.R. § 204.2(a)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). U.S. Citizenship and Immigration Services (USCIS) may rely on any relevant evidence in the record, including evidence from prior CIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

After a full, independent review of the relevant evidence in the record, the AAO concludes that the petitioner's former marriage to L-L- was entered into for the purpose of evading the immigration laws and consequently the AAO is barred from approving his Form I-360 petition pursuant to section 204(c) of the Act.

As noted above, the petitioner married L-L-, a United States citizen (USC), on March 13, 1992. L-L- filed a Form I-130 petition on behalf of the beneficiary on April 28, 1992 which was denied on September 16, 1993 because it was determined that the petitioner had entered into the marriage with L-L- for the sole purpose of obtaining an immigration benefit. The second Form I-130 by L-L- on behalf of the beneficiary was filed on March 31, 1994 and was denied on April 26, 1996 for failure to appear for interview. The petitioner and L-L- divorced on March 6, 1998.

On August 7, 1998, A-A-L- filed a Form I-130 petition on behalf of the petitioner. In a December 26, 2001 NOID in conjunction with A-A-L-'s Form I-130 petition, the director informed A-A-L- that the Form I-130 would be denied because service records showed that her husband's previous marriage (to L-L-) had been entered into for purpose of evading immigration laws. The director listed numerous inconsistencies in the interviews of L-L- and A-A-L-'s spouse. On December 14, 2002, the director after receiving no response to the NOID, denied A-A-L-'s Form I-130 petition.

In response to the director's July 6, 2005 NOID in this matter, the petitioner provided his personal statement, dated July 26, 2005, wherein he stated that he was married to L-L- between April of 1992 and March 1998 and that he was living with her in good faith. The petitioner stated further that L-L-

was involved in drugs, had an affair with another man, and abandoned him. The petitioner also provides a warrant of satisfaction dated October 30, 2000 issued to the petitioner and L-L- in satisfaction of a tax warrant issued to the petitioner and L-L-. The record also includes an invoice from a process service for service of a defendant in a civil case brought by the petitioner and L-L-. The record further includes two affidavits: (1) an affidavit signed by [REDACTED] dated January 10, 2002, wherein [REDACTED] declares that she is a friend of the petitioner and L-L- and used to often visit them at their apartment; and (2) an affidavit signed by [REDACTED] dated January 10, 2002, wherein Ms. [REDACTED] declares that she knew the petitioner and L-L- and used to visit them every other weekend while they were living in Jamaica, New York. The petitioner also submitted photocopies of Internal Revenue Service Forms 1040, filed by the petitioner and L-L- in 1992 and 1995.

The AAO has reviewed the evidence submitted and finds that the petitioner's statement does not provide details of his courtship, his marriage, or any other information to demonstrate that he entered into the marriage with L-L- in good faith. The petitioner does not provide sufficient evidence to overcome the numerous inconsistencies in his testimony and the testimony of L-L- when interviewed in regards to the April 28, 1992 Form I-130 petition.³ In addition, the satisfaction of a tax warrant, the joint prosecution of a civil case against a third party, photocopies of tax returns allegedly filed in 1992 and 1995, and the general statements of two affiants indicating the petitioner and L-L- lived together, do not provide the evidence necessary to establish the petitioner's intent in entering into his marriage with L-L- and to overcome the inconsistencies in the testimony of the petitioner and L-L-.

The record is devoid of any probative documentary evidence of the *bona fides* of the former couple's marriage. Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975). The petitioner and L-L- submitted no such evidence. The record thus supports the district director's conclusion that the petitioner and L-L- willfully misrepresented the petitioner's prior marital status. An independent review of the record supports the district director's determination that the petitioner married L-L- for the purpose of evading the immigration laws. Consequently, section 204(c) of the Act bars the approval of the instant petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of

³ In the December 26, 2001 NOID, the director indicated that the petitioner and L-L- provided conflicting statements regarding: how they first contacted each other; when and where the petitioner visited L-L- prior to their marriage; when and how they went on their honeymoon after their marriage, including their method of transportation; the kinds of joint accounts they held; the number and location of televisions in their apartment; and who made up the bed the morning of the interview.

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.