



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
EAC 06 199 50294

Office: VERMONT SERVICE CENTER

Date: **MAR 19 2009**

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, 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 resided with his wife, that he married her in good faith, and that his wife subjected him to battery or extreme cruelty during their marriage.

It is noted that on the I-290B appeal form, the petitioner has included the name of [REDACTED] from [REDACTED], in Los Angeles, California. Ms. [REDACTED] however, has not provided a Form G-28, Notice of Entry of Appearance by an Attorney or Representative. The AAO sent a fax to [REDACTED] on January 7, 2009, requesting a copy of the G-28. However, no response has been received by the AAO to date. As such, [REDACTED] has not established that she is a licensed attorney or an accredited representative authorized to undertake representations on the petitioner's behalf. *See* 8 C.F.R. § 292.1. As such, we will not recognize her appearance in this proceeding.

On appeal, the petitioner submits a statement and 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:

(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 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.

(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 Mexico who entered into the United States without inspection on January 1, 1987. On December 27, 2002, the petitioner filed a Form I-589, Application for Asylum and Withholding of Removal, which was referred to an Immigration Judge on January 31, 2003. On February 4, 2003, the petitioner was served with a Notice to Appear for removal proceedings charging him as inadmissible under section 212(a)(6)(A)(i) of the Act. On January 24, 2004, the petitioner married D-H¹, a U.S. citizen, in ██████████ Riverside, California. On April 7, 2004, D-H- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On June 1, 2005, the petitioner's spouse requested an exemption from the requirements of 8 C.F.R. § 204.2(a)(1)(iii). The petitioner's application for cancellation of removal, pursuant to section 240A(b)(1) of the Act, was denied by the Immigration Judge on May 26, 2006 and the petitioner's application for voluntary departure was granted until July 25, 2006, upon posting a bond in the amount of \$500.00 within five business days, with an alternate order of removal to Mexico. On June 5, 2006, the petitioner posted a \$500.00 bond and on June 26, 2006, the petitioner appealed the decision of the Immigration Judge.

The petitioner filed the instant Form I-360 on June 19, 2006. On January 25, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite joint residency, good moral character, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner timely responded to the NOID with additional evidence. On April 4, 2007, the director determined that the petitioner had established that he was a person of good moral character, but the director denied the petition because the petitioner had not established the requisite joint residency, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner timely appealed.

On appeal, the petitioner submits a statement, the meaning of which is not entirely clear, and additional evidence, including a letter from his "friend and landlord" and correspondence addressed to the petitioner's spouse at ██████████ in Riverside, California.

¹ Name withheld to protect individual's identity.

Joint Residence

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

- The petitioner's February 15, 2007 letter submitted in response to the director's NOID;
- An undated statement from the petitioner's spouse;
- A letter, dated April 30, 2007, from the petitioner's landlord, stating, in part, that the petitioner resided with his wife at [REDACTED], Riverside, California from 2002 through 2005;
- A solicitation from MasterCard addressed to the petitioner's spouse at the [REDACTED] address in Riverside, California, void after March 7, 2006;
- A solicitation from [REDACTED] addressed to the petitioner's spouse at the [REDACTED] address in Riverside, California, dated July 28, 2004;
- An undated solicitation from a religious organization addressed to the petitioner's spouse at the [REDACTED] address in Riverside, California;
- A solicitation from a mortgage company, with an expiration date of February 13, 2006, addressed to D- "[REDACTED]" at the [REDACTED] address in Riverside, California;
- Three incomplete bills from Cingular, dated September 6 - October 5, 2004, October 6, 2005 - November 5, 2005, January 6 - February 5, 2006, respectively reflecting the "user name" as the petitioner and his spouse;
- Two envelopes, neither postmarked, addressed to the [REDACTED] address in Riverside, California, reflecting the names of the petitioner and his spouse;
- Various photographs, including those of the wedding of the petitioner and his spouse; and
- A lease agreement, dated September 13, 2005, reflecting the names of the petitioner and his spouse, signed only by the petitioner.

On the Form I-360, the petitioner stated that he resided with his wife from the date of their marriage on February 24, 2003 until October 2005. In his decision, the director cited deficiencies in the documentation submitted by the petitioner to demonstrate joint residency with his spouse, including the incomplete billing statements from Cingular, listed above, which do not contain a billing address. Moreover, as noted above, although the petitioner submits a letter from his landlord, who asserts that

the petitioner resided with his wife at [REDACTED], Riverside, California from 2002 through 2005, the petitioner does not submit any corroborating evidence, such as a copy of a lease agreement reflecting both the names of the petitioner and his spouse. It is also noted that the September 13, 2005 lease agreement is signed only by the petitioner.

In the undated statement from the petitioner's spouse, she does not specify any joint address or even state that she resides with the petitioner. Moreover, the solicitation from MasterCard addressed to the petitioner's spouse at the [REDACTED] address in Riverside, California, has a "void after" date of March 7, 2006, which is several months after the reported separation date of the petitioner and his spouse. The solicitation from the mortgage company has an expiration date of February 13, 2006, which is also several months after the reported separation date of the petitioner and his spouse, and is addressed to D- "[REDACTED]" whose identity is not clear. As noted above, other solicitations and envelopes are undated and unpostmarked. Given the numerous deficiencies in the record, these documents alone do not establish that the petitioner and his wife actually resided together.

In sum, the relevant evidence provides intermittent documentation and contains numerous deficiencies regarding the petitioner's alleged residence with his wife. 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 February 15, 2007 letter, the petitioner stated that he and his wife were a happy couple and had close family ties, but he did not describe how he met his wife, their courtship, decision to marry, or any of their shared experiences, apart from the alleged abuse. On appeal, the petitioner provided no further relevant information.

On the Form I-360, the petitioner stated that he resided with his wife from the date of their marriage on February 24, 2003 until October 2005. In his February 15, 2007 letter, the petitioner claimed that he resided with his wife prior to their marriage. As discussed in the preceding section, the record contains only intermittent joint documentation, nearly all of which is incomplete, undated, unpostmarked or otherwise deficient. The wedding photographs confirm that the petitioner and his spouse were married, but these documents alone do not establish the petitioner's good-faith entry into the marriage. The petitioner did not submit the requested documentation, such as mortgage agreements or payments, leases showing joint tenancy, and jointly held bank accounts, utility bills, and insurance policies.

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 lack of probative detail and substantive information in the petitioner's testimony regarding how he met his wife, their courtship, decision to marry, 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.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the petitioner's statements in his February 15, 2007 letter and on appeal.

In his February 15, 2007 letter, the petitioner asserted that he was the victim of extreme mental cruelty, and that he did "not have [a] witness because all this was done in our intimacy and aside from being embarrassing [it] is also hard to explain on paper." The petitioner also asserted that he previously submitted an affidavit explaining his situation, but, as noted by the director, the record does not contain the said affidavit. The petitioner asserted that he "had embarrassing moments at parties or family reunion," but he did not describe any particular incidents in probative detail.

The petitioner does not explicitly state or otherwise indicate that his wife subjected him to battery. Accordingly, we will only discuss the petitioner's claim of extreme cruelty. The petitioner's testimony does not indicate that his wife's 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). The petitioner does not describe in probative detail any particular incidents where his wife threatened him with physical or mental injury. The petitioner's statements regarding the embarrassment his wife caused him do not establish that his wife subjected him to psychological, sexual abuse or exploitation, or that her actions were part of an overall pattern of violence.

The petitioner does not claim and the record does not indicate that the petitioner's wife subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner's 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.

Section 204(g) of the Act

Beyond the director's decision, section 204(g) of the Act further bars approval of this petition. Section 204(g) of the Act states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record in this case shows that the petitioner married his wife after being served with a Notice to Appear for removal proceedings charging him as inadmissible under section 212(a)(6)(A)(i) of the

Act. The record does not indicate that the petitioner resided outside of the United States for two years after his marriage.

The bona fide marriage exception to section 204(g) of the Act also does not apply to the petitioner. Section 245(e) of the Act states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good-faith entry

into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I)(aa), 1154(a)(1)(J); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”).

As the petitioner has failed to establish that he entered into his marriage with his wife in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has also failed to demonstrate that he qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

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

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.