



U.S. Citizenship
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FILE: [REDACTED]
EAC 03 160 52636

Office: VERMONT SERVICE CENTER

Date: **MAR 23 2009**

IN RE: [REDACTED]

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

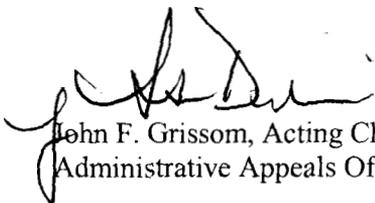
ON BEHALF OF PETITIONER:



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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO granted the petitioner's motion to reopen and reconsider its decision, and remanded the matter to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

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.¹

The petitioner filed the instant Form I-360 on April 28, 2003. The director denied the petition on August 20, 2004, on the basis of his determination that the petitioner had failed to respond to his request for additional evidence, and that the record did not contain sufficient documentation to establish that the petitioner had married J-A-,² his United States citizen spouse, in good faith. In its September 15, 2005 decision, the AAO agreed with the director's analysis, and declined to consider certain evidence submitted by the petitioner. The petitioner filed a motion to reopen and reconsider the AAO's decision. Although the AAO granted the petitioner's motion to reopen and reconsider its decision, and considered all evidence submitted by the petitioner, in its May 22, 2006 decision the AAO again agreed with the director that the petitioner has failed to establish that he had married J-A- in good faith. The AAO also found, beyond the director's decision, that the petitioner had failed to establish that he had been subjected to battery and/or extreme cruelty by J-A-. Although the AAO agreed with the director's reasoning, it remanded the petition to the director, on technical grounds, for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).³ The AAO also instructed the director to explore the issue of whether the petitioner was still married to J-A- at the time he filed the Form I-360, in order to determine that he had a qualifying relationship with a United States citizen.

The director issued the requisite NOID on August 29, 2006. Counsel submitted additional evidence with his October 27, 2006 response. The director denied the petition on February 7, 2007, and certified his decision to the AAO for review. In his denial, the director found that the petitioner had established the existence of a qualifying relationship with a United States citizen and that he had been subjected to battery and/or extreme cruelty by J-A-. However, the director found that the petitioner had again failed to establish that he entered into marriage with J-A- in good faith. Counsel submitted a supplemental brief and additional evidence on March 9, 2007.

¹ The record indicates that the petitioner appeared at the Newark District Office for an interview on March 4, 2009. Although there is evidence that the petitioner wishes to withdraw the Form I-360, the AAO has not received a formal, written request to withdraw the petition.

² Name withheld to protect individual's identity.

³ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

The sole issue on certification is whether the petitioner has established that he entered into the marriage with J-A- in good faith. As the AAO has already twice found the evidence of record insufficient to establish that the petitioner entered into marriage J-A- in good faith, and both of those decisions are now part of the record of proceeding, on certification the AAO will only consider the evidence submitted by the petitioner since the AAO's last decision. The following evidence in support of the petitioner's assertion that he entered into marriage with J-A- in good faith has been submitted into the record since May 22, 2006, the date of the AAO's last decision:

- Additional photographs of J-A- and the petitioner;
- Evidence that the petitioner transferred money to J-A-, via Western Union, on February 5, 2006;
- Receipts submitted as evidence that J-A- paid rent toward the couple's apartment on October 1, 2002; November 1, 2002; and December 1, 2002;
- An affidavit from [REDACTED] dated September 27, 2006;
- An affidavit from [REDACTED] dated October 15, 2006;
- An affidavit from [REDACTED] dated October 15, 2006;
- An affidavit from [REDACTED] (spelling unclear), dated February 28, 2007;
- An affidavit from [REDACTED] (spelling unclear), dated February 28, 2007;
- A psychological evaluation from [REDACTED] dated October 3, 2006;
- An affidavit from the petitioner, dated October 27, 2006;
- Another affidavit from the petitioner, dated February 21, 2007; and
- Counsel's March 7, 2007 brief.

Upon review, the AAO agrees with the director's determination that the petitioner has failed to establish that he entered into marriage with J-A- in good faith. In its earlier decisions discussing the petitioner's failure to establish that he entered into marriage with J-A- in good faith, the AAO found the statements of the petitioner and his friends insufficiently vague and lacking in detail, particularly with regard to their descriptions of the relationship between J-A- and the petitioner before the marriage.

With his own affidavits, as well as those of his friends, the petitioner provides additional details regarding the couple's courtship. However, while the petitioner provides additional information, much of that information is inconsistent with his previous testimony. For example, in his October 27, 2006 affidavit, the petitioner states that, after arriving in the United States in July 2000, he lived with his uncle, who owned a meat store. The petitioner states that his uncle left the house in the morning to go and work at the meat store, and that he returned home at night. According to the petitioner, one day he felt lonely in the house without his uncle, and went to go and visit him at the meat store. The petitioner states that, on his way to the meat store, he met J-A- and her friend, and asked them for directions to the store. J-A- and her friend led the petitioner to the meat store. According to the petitioner, J-A- called the store the following day and left her telephone number with the petitioner's uncle, and he and J-A- spoke that evening by telephone for 15-20 minutes.

However, this version of events conflicts directly with the petitioner's April 21, 2003 affidavit. In that affidavit, the petitioner stated that he met J-A- after he had started working in his uncle's store, when she came in to make a purchase. The petitioner stated that J-A- came to the store "a couple of times a week," and that one month after they first met, J-A- gave the petitioner her phone number.

The petitioner makes no attempt to reconcile these two versions of events. In one version, the petitioner is already working in his uncle's meat store, and in the other version, he is making his way to the store for the first time, and must ask J-A- for directions. In one version, he meets J-A- outside the store, and in the other version he meets her inside the store. In one version, J-A- gives her phone number to the petitioner's uncle, and in the other version she gives her phone number to the petitioner directly. In one version, J-A- gives out her phone number the day after their first meeting, and in the other version J-A- gives the petitioner her phone number one month after their first meeting. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The inconsistencies in the petitioner's testimony are not limited to the circumstances surrounding the couple's first meeting; the petitioner's testimony regarding their courtship is inconsistent as well. For example, in his October 27, 2006 affidavit, in the version of events in which the petitioner states he first met J-A- on his way to his uncle's store, the petitioner states that two days after they met, and one day after J-A- gave her phone number to the petitioner's uncle, J-A- took the petitioner to her house to meet her grandmother, with whom she was living. They met several times and, one week later, in a restaurant, J-A- asked the petitioner if he had a girlfriend and told the petitioner that she loved him.

However, this version of events also conflicts with the version offered by the petitioner in his April 21, 2003 affidavit. In his 2003 affidavit, in the version of events in which the petitioner stated that he first met J-A- after he began working in the store when she came in as a customer, and in which J-A- gave the petitioner her phone number one month after their first meeting, the petitioner described a different series of events, in which the couple began dating one month after their first meeting, rather than one week later as later reported. Again, 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. *Id.* 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. *Id.*

The petitioner introduces a further inconsistency into the record with his February 21, 2007 affidavit. While not directly related to the issue of his intentions upon entering into marriage with

J-A-, it detracts further from his credibility as a witness. In this affidavit, the petitioner states that he did not know he needed a “green card” in order to remain in the United States, as he had been told by friends that so long as he did not commit a crime, he could remain. However, in his October 27, 2006 affidavit, the petitioner stated that when J-A- proposed marriage, he told her that he was merely a visitor to the United States, and that he would not be able to live in the country without extending his visa. This additional inconsistency further undermines the credibility of the petitioner’s testimony. *See id.*

For all of these reasons, the AAO will accord little evidentiary weight to the testimony of the petitioner. For the same reason, the AAO will similarly accord little weight to [REDACTED] psychological evaluation. While the AAO does not question the expertise of [REDACTED] it does question the credibility of the petitioner’s testimony, which forms the basis of [REDACTED] findings. This evaluation, therefore, provides little useful information regarding the petitioner’s intentions upon entering into marriage with J-A-.

The affidavits of [REDACTED] and [REDACTED] do not establish that the petitioner entered into marriage with J-A- in good faith, as both affiants state that they have known the petitioner since 2001. As the petitioner and J-A- married in 2000, these two individuals were not acquainted with the petitioner at the time he entered into marriage with J-A-, and can provide little insight into the petitioner’s intentions at that time. Nor do the affidavits of [REDACTED] (spelling unclear), and [REDACTED] establish that the petitioner entered into marriage with J-A- in good faith, as they are insufficiently vague and lacking in probative, detailed information.

Nor do the additional photographs, evidence of a money transfer, or rental receipts establish that the petitioner married J-A- in good faith. As was noted by the AAO in its September 15, 2005 decision, the photographs demonstrate only that J-A- and the petitioner were together on a certain date. Nor does the fact that the petitioner transferred money to J-A- on February 5, 2006 evidence his intentions upon entering into the marriage in 2000. Nor do the receipts submitted as evidence that J-A- paid rent toward the couple’s apartment establish that the petitioner entered into the marriage in good faith: the AAO notes that, according to the letters that J-A- sent to the petitioner during her incarceration, J-A- would have been in jail on November 1, 2002. Thus, it is unclear to the AAO how J-A- could have paid this bill, and been issued this receipt, while incarcerated at the Passaic County Jail. None of this evidence, therefore, establishes that the petitioner entered into marriage with J-A- in good faith.

Finally, the AAO turns to counsel’s March 7, 2007 appellate brief. Although counsel looks to the petitioner’s affidavits as evidence of his intent upon entering into marriage, the AAO affords little evidentiary weight to such testimony, as it contains numerous unresolved inconsistencies and discrepancies. The AAO disagrees with counsel’s statement that the petitioner’s affidavits contain credible testimony. Counsel looks further to the testimony of J-A- in the letters she wrote to the petitioner while incarcerated. However, and as noted by the AAO in its September 15, 2005 decision, those letters were written two years after the marriage, and provide little insight into the petitioner’s intentions at the time of the marriage. Nor does the AAO find any merit in counsel’s

assertion that the director was overzealous: as set forth in the preceding discussion, the AAO agrees with the decision of the director, and finds no evidence of any improper behavior on the part of the director.

The petitioner has failed to establish that he entered into marriage with his wife in good faith. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and his petition must be denied. The director's decision will be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's February 7, 2007 decision is affirmed. The petition is denied.