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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  
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FILE:



Office: VERMONT SERVICE CENTER

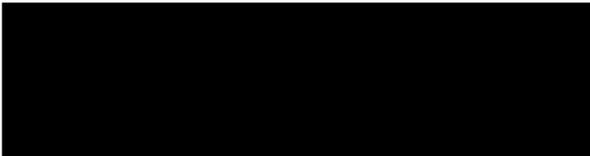
Date: SEP 09 2010

IN RE:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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 on the basis of his determination that the petitioner had failed to establish: (1) that he and his wife shared a joint residence; and (2) that he married his wife in good faith. On appeal, counsel submits a letter 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, the following:

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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.

\* \* \*

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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.

\* \* \*

- (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 petitioner is a citizen of the Philippines who entered the United States as a D-1 crewman on November 2, 1994. He married A-P-<sup>1</sup>, a citizen of the United States, on April 4, 2004. The petitioner filed the instant Form I-360 on January 22, 2007. The director issued two subsequent requests for additional evidence to which the petitioner, through previous counsel, submitted timely responses. After considering the evidence of record, including the petitioner's responses to the requests for additional evidence, the director denied the petition on December 29, 2009.

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<sup>1</sup> Name withheld to protect individual's identity.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition.

### Joint Residence

The first issue before the AAO on appeal is whether the petitioner shared a joint residence with A-P-. On the Form I-360, the petitioner stated that he and A-P- lived together from April 2004 until October 2005. The petitioner stated further that he and A-P- last resided together at [REDACTED], in Los Angeles, California, and on the Form G-325A, Biographic Information, he signed on April 14, 2004, the petitioner stated that he began living at that address in January 2003.

In his statement submitted on appeal, the petitioner briefly described the apartment he allegedly shared with A-P-, and its contents. However, the AAO notes that the petitioner also stated that after he and A-P- married, they moved into an apartment located at [REDACTED], in [REDACTED], which contradicts his statements on the Forms I-360 and G-325A that they lived together at the [REDACTED] address, and undermines the probative value of the petitioner's testimony. Moreover, an invoice from the [REDACTED] Fire Department issued during the period of the alleged joint residence was sent to the petitioner at [REDACTED], [REDACTED], which introduces another inconsistency into the record.

Nor does the other evidence submitted by the petitioner establish his claim to have shared a joint residence with A-P-. The document regarding a car insurance policy is not evidence of a shared residence, as no address was listed. Nor is the documentation of a joint savings account evidence of a shared residence, as the statements indicate minimal activity on the account: the four monthly statements submitted by the petitioner indicate that only one transaction occurred during those four months. The [REDACTED] Inpatient Admission and Discharge Record lists different addresses for A-P- and the petitioner and is therefore not evidence of a joint residence. Nor are the receipts from [REDACTED] for services rendered evidence of a shared residence, as all but one were issued after the cessation of the allegedly joint residence. Nor are the copies of canceled checks evidence of a shared residence, as (1) they were written from what appears to be an account held jointly by the petitioner and his first wife; and (2) although several of them were written to "[REDACTED]," there is no evidence, such as a lease, to back the assertion that this was actually the company from which the couple was renting the apartment. Nor are the cellular telephone records evidence of a shared residence, as they do not provide an address. Nor is the December 21, 2004 letter from A-P- regarding a parking violation evidence of a shared residence, as her letter does not provide an address and makes no reference to a shared residence. Although the divorce petition filed by A-P- supports the petitioner's claim to have shared a joint residence, this document alone does not establish that claim. Nor does it resolve the inconsistencies noted above.

While the AAO acknowledges the petitioner's claim in his initial statement that A-P- took all their pictures and joint documents when she moved out of the apartment, his testimony contains conflicting information regarding the location of their allegedly joint residence, which diminishes the probative value of that testimony. Nor does the relevant documentary evidence he submits establish his claim to have jointly resided with A-P-. Considered in the aggregate, the evidence of record fails to demonstrate that the petitioner resided with A-P-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### **Good Faith Entry into Marriage**

The second issue before the AAO on appeal is whether the petitioner has established that he married A-P- in good faith. The petitioner stated that he met A-P- after a church service in November 2001. He stated that he had noticed A-P- during the service and approached her in the parking lot afterward. They exchanged numbers and began dating. The petitioner recounted that during their courtship, he and A-P- went to movies and nightclubs, and spent time with friends. He stated that although A-P- told him that she wanted to marry him in February 2004, he was initially hesitant. They eventually married on April 4, 2004.

The AAO has reviewed the entire record and finds that, in sum, the relevant testimonial and documentary evidence fails to establish that the petitioner married A-P- in good faith. As a preliminary matter, the AAO incorporates here its previous discussion regarding the inconsistencies of record regarding the location of the couple's alleged joint residence, which undermines the evidentiary value of the petitioner's claim that they lived together after the marriage. Moreover, the petitioner's testimony lacks detailed, probative information regarding the couple's relationship prior to the wedding. Nor is the remaining, relevant documentary evidence of record sufficient to demonstrate the petitioner's good faith entry into the marriage. The evidence of a car insurance policy is not evidence of a good faith marriage or shared financial obligations, as A-P- is specifically barred from operating the insured vehicle. As noted previously, the statements pertaining to the joint savings account indicate minimal activity on the account: the four monthly statements submitted by the petitioner indicate that only one transaction occurred during that time. These statements, therefore, are not evidence of shared financial obligations. Nor are the canceled checks evidence of shared financial obligations, as they appear to have been written from an account held jointly by the petitioner and his first wife. As noted above, the Inpatient Admission and Discharge Record lists different addresses for A-P- and the petitioner, and the receipts from Kaiser Permanente for services rendered were issued primarily after the couple ceased living together. The cellular telephone records neither mention A-P- nor provide the couple's address. Nor does the December 21, 2004 letter from A-P- regarding a parking violation serve as evidence of the petitioner's good faith entry into the marriage, as it was written from her point of view, not that of the petitioner. The same is true of the birthday card allegedly sent by A-P- to the petitioner: it is the intentions of the petitioner, not those of A-P-, that are at issue here. Nor do the pictures submitted by the petitioner establish that he married A-P- in good faith, as they demonstrate only that the two were together on a single occasion. The petitioner has failed to

establish that he entered into marriage with A-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

**Conclusion**

On appeal, the petitioner has failed to overcome the director's grounds for denial and has not established that he jointly resided with A-P- or that he married her in good faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and this petition must remain denied.

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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.