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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B9

FILE:



Office: VERMONT SERVICE CENTER

Date:

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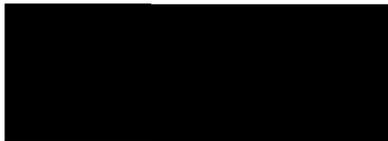
Petitioner:



FEB 15 2011

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 \$630. 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 Director, Vermont Service Center, denied the immigrant visa petition. 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.

The director denied the petition because the petitioner did not establish that he was eligible for immigrant classification based upon a qualifying relationship as the spouse of a U.S. citizen, that he resided with his U.S. citizen spouse, and that he entered into the marriage in good faith.

On appeal, counsel states, in part, that the petition was denied in error, as the petitioner's former spouse was a U.S. citizen and thus he is eligible for immigrant classification based on a qualifying relationship. Counsel also states that credible evidence established that the petitioner resided with his U.S. citizen spouse and that he married her in good faith. As supporting documentation, counsel submits an affidavit from the petitioner's former U.S. spouse, attesting to their joint residence and good-faith marriage, and a copy of the identification page from her U.S. passport.

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].

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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.

\* \* \*

(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.

(ii) *Relationship*. A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Trinidad who entered the United States as an F-1 nonimmigrant student on

January 31, 1994. On September 29, 1997, the petitioner married N-C-<sup>1</sup>, whom he divorced on July 31, 2000. On February 20, 2001, the petitioner's U.S. lawful permanent resident mother filed a Form I-130, Petition for Alien Relative, on his behalf, which was approved on February 17, 2005. On August 23, 2003, the petitioner married M-D-<sup>2</sup>, a U.S. citizen, who is the claimed abuser in the instant case. On March 2, 2007, the petitioner and M-D- were divorced.<sup>3</sup>

The petitioner filed the instant Form I-360 on August 22, 2008, and concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On December 15, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite qualifying relationship, joint residence, good moral character, and good faith marriage. The petitioner, through counsel, responded with additional evidence. On July 7, 2010, the director denied the petition because the petitioner did not establish that he was eligible for immigrant classification based upon a qualifying relationship as the spouse of a U.S. citizen, that he resided with his U.S. citizen spouse, and that he entered into the marriage in good faith. Counsel timely appealed.

#### *Qualifying Relationship and Eligibility for Immediate Relative Classification*

The director denied the petition because the petitioner did not submit sufficient primary or secondary evidence to establish that M-D- is a U.S. citizen. On appeal, counsel states that M-D- is a U.S. citizen and, as supporting documentation, counsel submits a copy of the identification page from M-D-'s U.S. passport. From the additional evidence submitted on appeal, M-D- is a U.S. citizen. Thus, the petitioner has overcome this portion of the director's objections.

#### *Joint Residence*

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

- M-D-'s affidavit dated July 30, 2010, submitted on appeal;
- The petitioner's affidavit dated August 18, 2008, submitted at the time of filing, and the petitioner's affidavit dated March 9, 2010, submitted in response to the RFE;
- An affidavit from the petitioner's [REDACTED] dated February 27, 2010;
- An affidavit from an acquaintance of the petitioner, [REDACTED] dated July 24, 2009;
- The petitioner's Form G-325A, Biographic Information, signed by him on August 18, 2008, which lists: [REDACTED], as his residence from May 2002 to the present time;
- The petitioner's federal income tax returns from 2003 – 2006, reflecting the petitioner's filing status as "married filing separately," his home address as the [REDACTED]

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

<sup>2</sup> Name withheld to protect individual's identity.

<sup>3</sup> Circuit Court for Baltimore City, Maryland, No. [REDACTED]

- address,” and M-D- as his spouse;
- An undated Change-of-Address Order from the U.S. Post Office addressed to M-D- at the [REDACTED] address”;
  - Undated correspondence from [REDACTED]” addressed to M-D- at the [REDACTED] address”;
  - A Laboratory Invoice from [REDACTED] dated June 6, 2004, addressed to M-D- at the [REDACTED] address”;
  - A statement from [REDACTED] dated August 23, 2004, addressed to M-D- at the [REDACTED] address.”

The AAO affirms the director’s determination that the petitioner did not establish that he resided with M-D-.

On the Form I-360, the petitioner stated that he lived with M-D- from August 2003 until November 2005. For the “last address at which you lived together . . .” and “the last date you lived together with that person at that address,” the petitioner stated the [REDACTED] address” and November 2005, respectively.

At the outset, the AAO acknowledges M-D-’s affidavit dated July 30, 2010, submitted on appeal, in which she asserts that she relocated “around the first week in October, 2003” to the [REDACTED] address” to reside with the petitioner. This information conflicts with the information provided by the petitioner, namely that he and M-D- began to reside together in August 2003 at the [REDACTED] address. As the record contains no explanation for these inconsistencies, the evidentiary value of the statement from M-D- is diminished.

In his August 18, 2008 affidavit, the petitioner states, in part, that he lived with M-D- “shortly after marrying her on 08/23/2003 in Baltimore, Maryland through November of 2005.” The petitioner explains that M-D- returned to New York to get her belongings “[a]fter the wedding weekend” and moved in their home in Baltimore, Maryland. The petitioner states that he and M-D- hosted his niece’s second birthday party at their house on September 17, 2005. The petitioner states further that M-D- secretly moved out one day while he was at work.

In his March 9, 2010 affidavit, the petitioner states, in part, that M-D- was able to seize, hide, and destroy documentation regarding their common residence, as he worked long hours and they worked opposite shifts. The petitioner also states that he had provided credible evidence of his and M-D-’s parties in their house.

In her February 27, 2010 affidavit, [REDACTED] states, in part, that she did not see her nephew (the petitioner) for several months after he and M-D- married and moved in together at the [REDACTED] address,” but she spoke with him on the phone.

In her July 24, 2009 affidavit, [REDACTED] states, in part, that when she visited the United States in the summer of 2005, she visited the petitioner and M-D- at their home (the [REDACTED]

address”).

Counsel asserts on appeal that the affidavits from the petitioner, all the witnesses, and M-D- attest to the joint residency of the petitioner and M-D-. Counsel also states, “If his ex-wife had not been brutally abusive and worthless, [the petitioner] might have had the opportunity and material resources to produce documentary proof of commingling assets in addition to their shared life.” Despite counsel’s description of M-D- as “brutally abusive and worthless,” he submits an affidavit from M-D- on appeal, in which she describes the petitioner in favorable terms and attributes their break-up to simply her inability to adjust to living in Baltimore and her and the petitioner’s differences. As noted earlier, M-D- claims to have moved to Baltimore in October 2003 and the petitioner claims that their joint residence started in August 2003. The record contains no explanation for these inconsistencies, which diminishes the value of M-D-’s statement in establishing a joint residence. In addition, although counsel asserts that the affidavits from the “witnesses” also attest to the petitioner and M-D-’s joint residence, two of the four affiants do not mention any details of a joint residence, and the remaining two affiants, [REDACTED] make only general statements of a joint residence, as described above, and provide no specific details. Moreover, as stated by the director in his July 7, 2010 decision, the petitioner’s tax returns also fail to establish joint residency because the petitioner filed “married filing separately.” Given the unexplained inconsistencies, the remaining four items, which include an undated Change-of-Address Order from the U.S. Post Office, undated correspondence from [REDACTED] a laboratory invoice, and a medical statement, do not establish that the petitioner resided with M-D-.

In sum, the relevant evidence provides scant documentation and contains unresolved inconsistencies and/or discrepancies regarding the petitioner’s alleged residence with M-D-. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Good Faith Entry into Marriage*

In addition to the documentation listed above, the record contains the following evidence relevant to the petitioner’s claim that he married his spouse in good faith:

- An affidavit dated July 15, 2008, from the petitioner’s sister, [REDACTED]
- An affidavit dated August 18, 2008, from the petitioner’s friend and former co-worker, [REDACTED]
- Medical fee documents issued to the petitioner the petitioner and M-D- from [REDACTED] and a related personal check dated March 30, 2004, and signed by the petitioner;
- M-D-’s medical election choices, effective date: 04/01/2004; and
- Photographs.

The AAO affirms the director’s determination that the petitioner did not establish that he entered into the marriage in good faith.

In M-D-'s affidavit dated July 30, 2010, submitted on appeal, she asserts, in part, that she and the petitioner "enjoyed each other's company while dating," that she "was also excited and blown over when he proposed . . .," and that she "still [has] a thrill remembering about [their] fairy tale wedding. . . ." While the AAO acknowledges M-D-'s affidavit on appeal, her feelings and perceptions regarding her courtship with the petitioner do not establish the petitioner's good-faith entry into the marriage. As discussed herein, the record contains numerous unexplained inconsistencies and discrepancies that significantly detract from the credibility of the petitioner's claim.

In his August 18, 2008 affidavit, the petitioner states, in part, that: he was introduced to M-D- in New York City by a former friend in July 2002, while he was away from his "assignment in Boston"; he and M-D- communicated via telephone, email, and instant message, and he visited her frequently on the weekends throughout the remainder of the summer and the fall of 2002; they soon started dating and "the circle of friends now knew [them] to be inseparable"; they had "pleasant and uplifting" times, which were like "a story from a fairy tale"; after January 2003, the petitioner returned to Maryland from Boston, whereupon he and M-D- visited each other in New York and at his home in Baltimore, Maryland; M-D- met the petitioner's relatives in Boston in May 2003, when she and the petitioner attended the graduation of the petitioner's [REDACTED] on July 23, 2003, the petitioner proposed to M-D- and married her the following month; and, after the wedding weekend, M-D- moved into their home in Baltimore, Maryland after gathering her belongings from New York.

In his March 9, 2010 affidavit, the petitioner states, in part, that: after M-D- moved to Maryland from New York in 2003, she "did odd jobs that did not provide her with a realistic and financial foundation through 2005"; as M-D- "was reluctant, concealed and . . . guarded with her personal documents," it was "difficult to open new accounts in [their] names or [add] her to existing documents"; they took few photos as they were both "camera shy" and wanted only glamour shots; M-D- seized, hid, or destroyed the photos that did exist; several witnesses can attest to the petitioner and M-D- attending a Christmas party in 2006, "couples night out" on the [REDACTED] in D.C., his sister's graduation and graduation party, parties at M-D-'s mother's house, his niece's second birthday party at their home, and "several other family/social events/gatherings"; and he and M-D- shared the same family care physician. The petitioner also states that he and M-D- "entered the marriage because [they] loved and cared for each other," that they had an extensive courtship that included attending functions together, and that he ensured that they were both covered by medical insurance. The petitioner states that he does not have many joint documents because M-D- "seized" them.

[REDACTED] testimony in her July 15, 2008 affidavit conflicts with the petitioner's testimony. Specifically, in describing when she and her family first met M-D- in June 2003, which was prior to the marriage of M-D- and the petitioner, she states:

Though she also got along seemingly well with the other family members, I was genuinely concerned about her temper. I noticed that she could easily flip moods and get easily upset in any heated discussions. [The petitioner] admirably bore [sic] the blunt [sic] of her moods but you

could see he seemed embarrassed.

This information conflicts with the petitioner's August 18, 2008 testimony, in which he states, "Prior to the marriage, I thought [M-D-] and I had a clear understanding of each other since we never found ourselves in heated debates, discussion or arguments." The record contains no explanation for this inconsistency.

testimony in her August 18, 2008 affidavit also conflicts with the petitioner's testimony. Specifically, states, in part, that, during his marriage, the petitioner "confided in [her] about several incidences that occurred in his marriage," including the following:

[The petitioner] and his wife went on a trip for the weekend to New York sometime in August 2006. On their return, [M-D-] demanded that [the petitioner] pull the car over at a rest stop. [M-D-] got out of the car and entered another car with another male counterpart and drove off. . . .

This information conflicts with the petitioner's August 18, 2008 testimony, in which he describes this "rest stop" incident occurring on October 2, 2005. It is also noted that the August 2006 date that alleges this incident occurred is several months after the alleged "last date" that the petitioner and M-D- resided together. Again, the record contains no explanation for this inconsistency.

In her February 27, 2010 affidavit, mentions incidents involving the petitioner and M-D-that are not mentioned in the petitioner's testimony. Specifically, describes four trips that she took with the petitioner and M-D-, the first two of which are not mentioned by the petitioner. Again, the record contains no explanation for these discrepancies.

In her July 24, 2009 affidavit, also mentions information not mentioned by the petitioner in his testimony. For example, states, in part, that the petitioner and M-D-"invited everyone to attend [their wedding] and even offered to help with hotel accommodations for all those in attendance. . . . I volunteered my services to bake and ice a wedding cake for which the couple agreed." In addition to the petitioner not having mentioned this information in his own testimony, the petitioner's wedding photos do not depict any wedding guests. The record also does not contain any corroborating evidence such as hotel receipts for the accommodations all of the alleged wedding guests. Again, the record contains no explanation for these inconsistencies and/or deficiencies.

On appeal, counsel states: "[M-D-'s] sworn statement unequivocally confirming and reaffirming their good faith marriage and the fact that the joint documents were unavoidably lost during her induced relocation and long storage is unequivocal and dispositive." This information, however, conflicts with the petitioner's March 9, 2010 testimony that M-D- went on a "rampage . . . hiding/destroying documents" and "maliciously made sure [he] did not have or retain many joint documents of marriage." Again, the record contains no explanation for this inconsistency. Counsel also states: "The unchallenged affidavits and the couple's conduct while dating and during marriage establish the good faith of the marriage." Again, the affidavits from the petitioner and on his behalf contain unexplained inconsistencies, which detract from their probative value. Given these unexplained inconsistencies, the

remaining items, which include an undated Change-of-Address Order from the U.S. Post Office, undated correspondence from [REDACTED] a laboratory invoice and the medical/insurance documents, do not establish that the petitioner married M-D- in good faith. The photographs confirm that the petitioner and M-D- were married and pictured together, but, given the unexplained inconsistencies and/or deficiencies, they do not establish the petitioner's good-faith entry into the marriage. The unexplained inconsistencies and discrepancies in the record, along with the lack of information in the petitioner's testimony regarding his shared experiences with M-D-, apart from the alleged abuse, significantly detract from the credibility of the petitioner's 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.

As discussed herein, the petitioner has not demonstrated that he resided with his wife and that he entered into their marriage in good faith. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

The petition will be denied and the appeal dismissed for the above stated reasons. 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.