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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



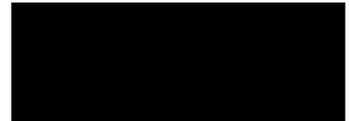
U.S. Citizenship
and Immigration
Services



B9

DATE Office: VERMONT SERVICE CENTER

FILE:



IN RE: JUN 08 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:

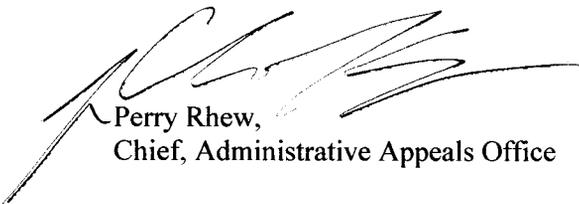


INSTRUCTIONS:

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 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.

The director denied the petition because the petitioner did not establish that he resided with his wife, married her in good faith and that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, the applicant contends that the director erred in denying the petition, and he submits a statement in support of the appeal.

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 explained 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 reflects that the petitioner is a native and citizen of the Dominican Republic who entered the United States without being admitted or paroled on or around March 8, 2000. On April 4, 2001, the petitioner married U.S. citizen C-F-¹, in New York. C-F- filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf on May 10, 2001, and the couple attended an interview on June 6, 2002. The petitioner and his wife were scheduled for a second interview on August 4, 2003, which the couple failed to attend.

The petitioner filed his first Form I-360 on February 26, 2003. On April 7, 2004, the director denied the petition finding that the petitioner did not establish that he married C-F- in good faith. The AAO dismissed a subsequent appeal on August 12, 2004. The petitioner filed the instant Form I-360 on September 13, 2004. On May 19, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residency, good-faith entry into the marriage and battery or extreme cruelty. The petitioner responded to the RFE with additional evidence. On August 4, 2005, the director denied the petition on the three aforementioned grounds. The petitioner timely appealed.

On appeal, the petitioner contends that the director erred in denying his petition because: (1) he provided sufficient evidence to support his eligibility; (2) the director did not accord any weight to the documentary evidence presented, including the order of protection that the petitioner obtained against his wife, and his personal statement; and (3) the director failed to take into account the non-availability of additional documentary evidence given the passage of time and the couple's living situation.² These contentions lack merit.

Joint Residence

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

- Two personal statements from the petitioner, dated February 11, 2004, and February 20, 2004
- Three letters from the petitioner's alleged landlord [REDACTED] dated May 23, 2002, February 11, 2004, and March 15, 2004
- A Marriage Certificate dated April 10, 2001, indicating that both parties resided at [REDACTED]
- A copy of the Petition for Alien Relative (Form I-130) filed by C-F-, which the petitioner

¹ The petitioner's spouse's name is withheld to protect her identity.

² Although the petitioner contends that a psychotherapist's report supports his claim that he was a battered spouse, the record does not include such a report.

submitted in these proceedings and the petitioner's Form G-325A Biographic Information Forms, dated April 30, 2001, indicating that he resided at the [REDACTED]

- A partial copy of an unsigned joint federal income tax return for 2001, indicating the couple's address as [REDACTED]
- A Change of Address Form, dated [REDACTED] indicating the petitioner's former address as [REDACTED]
- A receipt for the purchase of an air conditioner made out to [REDACTED]
- A copy of the petitioner's New York State Identification Card, issued on [REDACTED] listing the [REDACTED]
- Copies of two envelopes addressed to C-F- at the [REDACTED] post-marked [REDACTED]
- Copies of envelopes addressed to the petitioner at the [REDACTED] address, post-marked in [REDACTED]
- Citibank Statements, dated [REDACTED] addressed to the petitioner, in trust for C-F-, at the [REDACTED]
- Documentation relating to the petitioner's January 7, 2003 Ex-Parte Temporary Order of Protection against C-F-
- Monthly statements from the IRS addressed to the petitioner and C-F- at the [REDACTED] dated [REDACTED]
- A letter from the New York Department of Motor Vehicles addressed to C-F- at the [REDACTED] address, dated [REDACTED]
- A letter from [REDACTED], dated [REDACTED]
- A letter from [REDACTED], dated [REDACTED]
- A letter from [REDACTED], dated [REDACTED]

On the Form I-360, the petitioner stated that he resided with his wife from April, 2001, until July, 2002. However, the documentation regarding the couple's joint residence is inconsistent and inconclusive. First, the couple's marriage certificate and Forms I-130 and the petitioner's Form G-325A indicate that the couple resided at [REDACTED]. However, the petitioner's February 11, 2004 personal statement indicates that he lived at 1220 [REDACTED] Avenue, [REDACTED]. Further, the letter from [REDACTED] indicates that the petitioner and his wife lived with her at [REDACTED]. Finally, the petitioner's change of address form indicates that his former address was [REDACTED]. Given this inconsistent information, the petitioner has failed to demonstrate by credible evidence that he resided at the [REDACTED] apartment with C-F-.

Second, the petitioner states that when the person he lived with was approved for a new apartment, they all moved together from [REDACTED]. See *Personal Statement of [REDACTED]*. The petitioner claims that they lived at the [REDACTED] address until [REDACTED]. *Id.* This claim is inconsistent with the letter from the petitioner's former housemate Maria Torres, which does not mention the

Further, [REDACTED] indicates that she asked the petitioner and his wife to move out of her apartment when she resided at [REDACTED] *Letter from [REDACTED]*. Although the copy of the 2001 joint federal income tax return lists the [REDACTED] address, this document is unsigned, and it is dated four months after the petitioner and C-F- allegedly moved from that address. Further, the petitioner appears to admit that the couple did not reside at that address when the tax forms were prepared because he states that he used the [REDACTED] address for the tax return because it was a secure address and he "did not want [C-F-] to have access to [this] information." *Personal Statement of [REDACTED]*. Finally, no other documents in the record show that the petitioner and C-F- resided together at the [REDACTED] address. Given this inconsistent and inconclusive information, the petitioner has failed to demonstrate by credible evidence that he resided at the [REDACTED] address with C-F-.

Third, the petitioner claims that he last resided with C-F- at [REDACTED]. *Form I-360*, filed Sept. 13, 2004. The petitioner claims that the couple rented a room in the apartment of [REDACTED]. *See Statement in Support of Appeal; see also Letters from [REDACTED]*. As noted by the director, however, the letters from [REDACTED] are not reliable because the petitioner failed to explain why the third letter was written in Spanish, accompanied by an English translation, while the first two letters were written in English, without translation. Further, because [REDACTED] stated that "everything was stable until [C-F-] abandoned [REDACTED]" and she does not state that C-F- was physically abusive, these letters are inconsistent with the petitioner's claims of multiple confrontations and incidents of abuse in their apartment. *Cf. Personal Statement of [REDACTED]* dated [REDACTED] with *Letter from [REDACTED]* dated [REDACTED]. Accordingly, these letters are entitled to little weight.

Fourth, the petitioner claims that he lived with C-F- at the [REDACTED] address until she moved out in July, 2002. *Form I-360*, filed Sept. 13, 2004. However, this date is inconsistent with the information provided by the petitioner in support of his petition for a temporary order of protection. Specifically, in the Petition for Order of Protection, the petitioner alleged that "[o]n or about December 19, 200[2]³ at home of Petitioner and Respondent, the Respondent committed an act or acts which constitute" various forms of abuse. *See Family Offense Petition*, dated Jan. 7, 2003. This account of abuse at the home of both parties is inconsistent with the petitioner's claim that C-F- moved out of the apartment in July, 2002. Additionally, the Family Protection Registry Information Sheet, dated January 7, 2003, indicated C-F-'s address as [REDACTED].

Fifth, although the petitioner has presented copies of official correspondence addressed to C-F- at the [REDACTED] address, all of these documents are dated after July, 2002. *See Citibank Statements* (dated October 24, 2002, November 26, 2002, and July 23, 2003); *IRS Monthly Statements* (dated June 18, 2003, and July 16, 2003); *Letter from the New York Department of Motor Vehicles* (dated January 15, 2004). Because the petitioner claims that C-F- had moved out of

³ The Petition indicates that the abuse occurred on or about December 19, 2003, which appears to be a clerical error.

the apartment in July, 2002, these letters do not support a finding that C-F- resided at the [REDACTED] address with the petitioner.

Sixth, the remaining, relevant evidence fails to support the petitioner's claim. The air conditioner receipt and the two envelopes are addressed to C-F- individually at the [REDACTED] address are handwritten and dated a few days before the couple's Form I-130 interview. Accordingly, they are entitled to very little evidentiary weight. The letter from [REDACTED] stating that he has a grocery store "which is located below the building where they live in the year two thousand one," is of limited value because it is vague and fails to indicate the address of the property. The letter of [REDACTED] also fails to show joint residence because she stated that she "knew [C-F-] in 7-02-2002," which is when the petitioner claims C-F- moved out of the apartment. Also, the letter fails to provide the address where C-F- allegedly lived with the petitioner.

In addition to the deficiencies in the relevant documents, the petitioner failed to provide any probative, detailed description of any of the residences he allegedly shared with his wife. Accordingly, the petitioner has failed to show that he resided with C-F-.

Good Faith Entry into Marriage

The director determined that the evidence was insufficient to establish that the petitioner entered into the marriage with C-F- in good faith. On appeal, the petitioner contends that he provided sufficient probative evidence to demonstrate a good faith marriage.

In his February 20, 2004 affidavit, the petitioner stated that he was introduced to C-F- through a mutual friend, and that they decided to marry after going out for more than six months. He stated that he married "because he truly loved her and [he] thought that [he] had found the love of [his] life but it turned out to be the worst thing [he has] done." In [REDACTED] letter, he stated that the couple "had a matrimony in good faith, because either both of them came to my grocery store to buy, which is located below the building where they live in the year two thousand one." The record also includes several letters referencing the couple's relationship and alleged joint residence.

Here, the petitioner's generalized affidavit does not describe in detail how he met his wife, their courtship and decision to marry, or their wedding or any of their shared experiences, apart from the alleged abuse. The additional letters submitted in support of the petition are similarly bereft of pertinent details regarding the couple's relationship. The inconsistent information regarding the couple's alleged joint residence further undermines the persuasive value of the testimony. Accordingly, this testimonial evidence fails to demonstrate that the petitioner married C-F- in good faith.

The record also contains the couple's marriage certificate, several undated photographs of the couple, a partial copy of an unsigned joint federal income tax return for 2001, two monthly

statements from the IRS addressed to the petitioner and C-F, and three Citibank statements addressed to the petitioner, in trust for C-F-. Here, the petitioner's bank statements, which reflect an account held in trust for C-F-, are not evidence of a joint account with comingled funds. Further, the bank statements post-date the couple's separation, and therefore do not provide evidence of a good faith marriage. Further, given the generalized nature of the testimony in the record, coupled with the unresolved inconsistencies regarding the couple's residence, the remaining, relevant documents are insufficient to establish a good faith marriage.

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 and supporting letters, along with the unresolved inconsistencies in the record, significantly detract 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

The director determined that the evidence did not establish the requisite battery or extreme cruelty. On appeal, the petitioner contends that his personal statement and the order of protection he obtained against his wife show that he was subjected to extreme cruelty.

In his February 20, 2004 affidavit, the petitioner stated that C-F- cursed and belittled him, interrogated him regarding his activities, and threw pots and pans around the apartment and broke furniture when she got mad. He claims that during one argument she punched him in the face and told him that he was not a "real man." When they separated, C-F- "practically trashed [his] apartment." Thereafter, C-F- constantly called him on the telephone to curse him and demand money, and she went to his job and "would push [him] around to provoke [him] in front of [his] coworkers," forcing him to get an order of protection. In his February 11, 2004 affidavit, the petitioner stated that C-F- had "problems with the use of alcohol and drugs."

On January 7, 2003, the Family Court in Bronx County, New York, issued an ex-parte Temporary Order of Protection against C-F-, valid until April 3, 2003. In the Petition filed in support of the Order, the petitioner alleged that C-F- pushed him during an argument, cursed at him, tore his clothes, tried to provoke him, and called him to ask for money. In a January 4, 2003 domestic incident report, the petitioner stated that C-F- "is constantly calling his home and work place demanding money," and she says that "if you don't send money you'll see what will happen." The petitioner also stated that he had to switch jobs because of the telephone calls, and he feared for his safety.

The relevant evidence fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. First, the petitioner's claims that his wife cursed and belittled him, interrogated him, damaged the apartment, badgered him for money, and attempted to provoke him, do not establish that she subjected him to extreme cruelty, as that term is defined by the regulation at 8

C.F.R. § 204.2(c)(1)(vi). The record lacks probative, credible evidence that C-F-'s non-physical actions involved psychological abuse, threatened violence or were otherwise part of an overall pattern of violence.

Second, the evidence regarding the petitioner's claims of physical abuse is vague and equivocal. The petitioner claims that during one argument C-F- punched him in the face, and he also claims that she pushed him around to provoke him. However, the petitioner failed to provide sufficient probative detail regarding the circumstances surrounding these incidents. Additionally, these incidents are not mentioned in the domestic incident report filed in support of the temporary order of protection.

The additional statements submitted in support of the petition either do not mention the claimed abuse, or they provide inconsistent accounts not reflected in the petitioner's statements. For instance, in her March 15, 2004 letter, the couple's alleged landlord [REDACTED] states that C-F- abandoned the petitioner, but she makes no mention of abuse. Similarly, in her February 11, 2004 letter, [REDACTED] make a reference to "harassments" and constant fighting over money, but she did not state that the petitioner was abused. [REDACTED] stated that C-F- bit and scratched the petitioner, and [REDACTED] and [REDACTED] state that C-F- slapped the petitioner. However, the petitioner did not discuss any such incidents in his affidavits. Accordingly, these statements do not support a finding of battery or extreme cruelty, and the petitioner has not met the requirements of section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

In sum, the petitioner has not demonstrated that he resided with his wife, that he entered into their marriage in good faith, or 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 remain denied.

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.