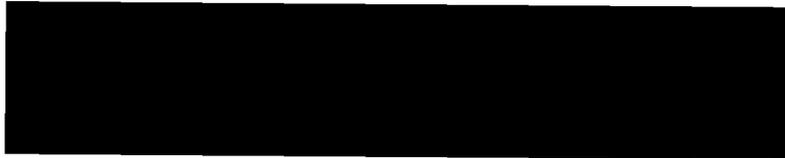


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

DATE: OFFICE: VERMONT SERVICE CENTER

FILE:



OCT 25 2011

IN RE: BERNARDO ANTONIO MURILLO

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 the \$630 fee. 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 (the director) revoked approval of the immigrant visa petition after properly notifying the petitioner 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 citizen of the United States.

The director revoked approval of the petition on the basis of his determination that the petitioner had failed to establish that he was legally free to marry his wife at the time of their wedding. On appeal, counsel submits additional testimonial and documentary evidence.

Applicable Law

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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

(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.

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:

(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

* * *

(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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Colombia, married M-B,¹ a citizen of the United States, on May 7, 2004. He filed the instant Form I-360 on April 9, 2007 and it was approved on June 4, 2008.

On November 19, 2009, the petitioner appeared at the Newark, New Jersey Field Office, in connection with the adjustment of status application he filed based upon the approved Form I-360.² During that

¹ Name withheld to protect individual’s identity.

interview, questions arose regarding the petitioner's ability to have legally entered into marriage with M-B-. Specifically, the field office director discovered that on April 14, 1999 the petitioner had appeared at the U.S. Consulate in Bogota, Colombia in order to apply for a visitor's visa to enter the United States. The petitioner stated on his visa application that he was married to A-J,³ and that they had two children together. On the same day, A-J- also stated that she was married to the petitioner and they had two children together. Their visas were granted and the petitioner, A-J- and their children entered the United States together as nonimmigrant visitors in December 1999.

The director issued a Notice of Intent to Revoke (NOIR) on March 12, 2010, and notified the petitioner that because the record lacked evidence of the legal termination of his marriage to A-J-, the petitioner had failed to demonstrate that he was legally free to marry M-B-. The petitioner, through counsel, submitted a timely response on April 16, 2010, and claimed that he was never married to A-J-. He stated that he and A-J- were merely living together and that his statement on the visa application was a "mistake." The director found the petitioner's response insufficient to overcome his proposed ground for revocation, and he revoked approval of the petition on July 8, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The additional evidence submitted on appeal does not overcome the director's determination. In addition, beyond the decision of the director, the petitioner has not established that M-B- subjected him to battery or extreme cruelty during their purported marriage.

Qualifying Relationship

In his April 13 and July 20, 2010 affidavits, the petitioner stated that he and A-J- had lived together "as a couple for a long time" and had two children together, but that it was his "big mistake" to list A-J- as his wife on his visa application. The petitioner equivocally stated in his July 20, 2010 affidavit: "I was not supposed to do it, but the consul accept the application like that and never requested a marriage certificate." The petitioner also submitted an April 14, 2010 sworn statement of his sisters who briefly attest that the petitioner was never married in Colombia.

The petitioner asserted in his July 20, 2010 affidavit that the only document indicating whether an individual in Colombia has been married is the birth certificate, which would be annotated to indicate the date and place of the wedding. On appeal, the petitioner submits printouts from the websites of the United Nations Children's Fund (UNICEF) and Seventh Notary Medellin, which indicate that a person's marital status in Colombia would be recorded on the civil registration of his or her birth.

The record contains a copy and certified English translation of the civil registration of the petitioner's birth, which was issued on March 26, 2010 and contains no annotation regarding any marriage of the petitioner. On appeal, the petitioner claims that this document establishes that he was never married to A-J- in Colombia and was free to marry M-B-. However, the validity of this document is questionable. The record shows that the petitioner married M-B- in 2004. The petitioner has not stated, and the

² See Form I-485, Application to Register Permanent Residence or Adjust Status, [REDACTED] filed September 17, 2009 and denied February 9, 2011.

³ Name withheld to protect individual's identity.

record contains no evidence that, their marriage has been legally terminated. Accordingly, at the time the petitioner's Colombian civil registration was issued, the petitioner was married, but the document contains no indication of his marriage.

The record of the petitioner's visa application in which he stated that he was married to the mother of his children provided the director with good and sufficient cause to revoke approval of the instant petition after the petitioner failed to provide sufficient evidence that he was legally free to marry M-B-. In sum, the preponderance of the relevant evidence submitted below and on appeal fails to demonstrate that the applicant had a qualifying relationship with M-B- and that he was eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act.

Battery or Extreme Cruelty

Even if the petitioner had established a qualifying relationship with M-B-, the record does not demonstrate that M-B- subjected him to battery or extreme cruelty during their marriage. In his one-page, undated statement that he submitted with the Form I-360, the petitioner recounted that after their marriage, M-B- would frequently visit the Dominican Republic, but would never tell him where she was staying and would not contact him while she was gone. The petitioner explained that her frequent absences caused problems between them and she threatened not to attend his immigration appointments and used foul language. After the couple's first immigration-related interview, the petitioner stated that he discovered that M-B- had actually been married twice before, but she had only told him of one prior marriage. The petitioner concluded by reporting that M-B- had once again gone to the Dominican Republic and a friend of hers had told him that she was romantically involved with another man in that country.

The record also contains a psychological report of the petitioner written by [REDACTED] based on a single interview with the petitioner on February 24, 2007. [REDACTED] stated that M-B- abused the petitioner "verbally, physically, sexually, and psychologically" and he diagnosed the petitioner with adjustment disorder with mixed anxiety and depressed mood. While we do not question [REDACTED] professional expertise, his report is of limited probative value because the petitioner himself mentioned none of the forms and examples of abuse discussed by [REDACTED]

The petitioner also submitted copies of his patient information form from the Family Medicine office of [REDACTED] which show that on August 8, 2006, he was prescribed medication for depression and anxiety and that he reported feeling much better, had no complaints, and had improved mentally and physically on subsequent visits on August 29 and November 22, 2006 and on March 1, 2007. While the petitioner's medical record confirms that he was treated for depression and anxiety, the physician's notes do not state the cause of, or any contributing factors to his condition. The medical record contains no reference to any abuse inflicted upon the petitioner by M-B-.

In sum, the relevant evidence fails to demonstrate that during their purported marriage, M-B- subjected the petitioner to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(2)(vi), and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determination that he did not have a qualifying relationship with M-B- and was ineligible for immediate relative classification based on such a relationship. Beyond the director's decision, the relevant evidence also fails to demonstrate that M-B- subjected the petitioner to battery or extreme cruelty during their purported marriage.⁴ Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not met that burden and the appeal will be dismissed. Approval of the petition will remain revoked.

ORDER: The appeal is dismissed.

⁴ A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).