

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



39

DATE: **APR 03 2012**

Office: VERMONT SERVICE CENTER



IN RE: Petitioner



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:

SELF-REPRESENTED

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,

Jerry 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 petition will remain denied.

The petitioner seeks immigrant classification pursuant to 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 determined that the petitioner had not established that he had jointly resided with the United States Citizen (USC) spouse or had entered into the marriage in good faith. On appeal, the petitioner submits a brief and additional documentation. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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 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 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 under section 204(a)(1)(A)(iii) of the Act are set forth 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 filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also 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.

(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.

Facts and Procedural History

The petitioner is a native and citizen of Slovenia who entered the United States on or about June 2, 2004 as a nonimmigrant J-1 exchange visitor whose status was subsequently changed to that of an F-1 student. He married D-S-¹, the claimed abusive United States citizen, on January 18, 2008. The marriage was dissolved on March 19, 2009 and filed in San Diego Superior Court on June 12, 2009. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on July 17, 2009. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established he had jointly resided with the USC spouse or had entered into the marriage in good faith. The petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief including his personal statement, and additional documentation.

Joint Residence

On the Form I-360, the petitioner stated that he resided with D-S- from January 2008 until November 2008. In an April 1, 2009 personal statement, the petitioner indicated that D-S- moved in with him a week after their marriage. The initial record also included a lease for an apartment on [REDACTED] entered into on July 5, 2008 for a one-year term. In a statement in response to the director's RFE, the petitioner declared that although the couple was "married almost a year . . . (From January 18, 2008 to the date [she] was placed in mental hospital on November 16, 2008) [they] resided together a much shorter period due to her frequent manic episodes." The petitioner stated that D-S- left him multiple times during the marriage only to return a week or two later to live with him. In a statement signed by [REDACTED] the petitioner's former roommate, [REDACTED] stated that he helped the petitioner and D-S- move into an apartment on Western Avenue but that he heard that D-S- left shortly thereafter and the petitioner was forced to return to the apartment he had shared with the declarant. [REDACTED] also

¹ Name withheld to protect the individual's identity.

indicated that he helped the petitioner and D-S- locate an apartment at a later time on [REDACTED] and at some point the petitioner was forced to move to another apartment on [REDACTED] to get away from D-S-; however, D-S- subsequently found the petitioner and moved back in with him.

The director in this matter pointed out the deficiencies in the limited documentary evidence, as well as the deficiencies in the petitioner's testimony and the testimony of other affiants who submitted testimony on the petitioner's behalf.

On appeal, the petitioner provides additional documentary evidence showing D-S- listed her address as the [REDACTED] address on several forms including job applications, was provided a parking permit for the [REDACTED] complex, and was at the [REDACTED] address and accepted repair work done on July 24, 2008. Although the petitioner submitted evidence that D-S- used the [REDACTED] address, he does not provide sufficient testimony or other evidence that he resided at this particular address. In addition, the petitioner has not provided probative testimony or other information detailing the actual dates D-S- allegedly resided with him. The term "residence" means the place of general abode; the place of general abode of a person means his or her principal, actual dwelling place in fact, without regard to intent. Section 101(a)(33) of the Act. The petitioner testified that the couple resided together for a much shorter period than the length of their marriage, January 2008 to November 16, 2008,² because of D-S-'s manic episodes and as the petitioner has not provided probative evidence of the dates and circumstances of each of the claimed joint residences, the record is insufficient to establish that the couple established a joint residence during the course of the marriage.

Good Faith Entry into Marriage

In the petitioner's initial statement appended to the petition, he indicated that he met D-S- in June 2007 through an Internet dating service. He noted they emailed each other and eventually she invited him to her house in San Diego. He stated he visited again a week later and they went out shopping and beach hopping. He indicated they both enjoyed art and enjoyed working out so they started going to the gym together. The petitioner averred that D-S- started staying at his apartment for a week at a time as he could not stay at her house because her parents were conservative. He stated he proposed to her in December 2007 and they married on January 18, 2008.

In response to the director's RFE, the petitioner indicated that as D-S- suffered from bipolar disorder, each time she left him she would destroy anything relating to them so he did not have much documentation. In the petitioner's mother's affidavit, his mother declared that she talked to D-S- frequently via telephone as she lived in Slovenia and that while dating the petitioner traveled every week to San Diego where D-S- resided with her parents and sometimes he stayed over the weekend. The petitioner's mother noted that D-S- left the petitioner a month after the marriage and again in April 2008, in May 2008, and in September 2008, and each time her son took D-S- back

² Although the petitioner stated in response to the director's RFE that the marriage lasted from January 2008 until November 16, 2008, the record includes the couple's divorce judgment dissolving the marriage on March 19, 2009 which was filed June 12, 2009 in San Diego Superior Court.

because he loved her. The petitioner's sister, who also lives in Slovenia, testified that her brother was crazy about D-S- and loved her a lot. [REDACTED] declared that D-S- frequently visited their apartment when the couple dated and also stayed over for days.

The director discussed the deficiencies in the documentary evidence submitted as well as the general testimony submitted regarding the petitioner's intent when entering into the marriage.

On appeal, the petitioner notes the frequency of telephone calls between the couple during the marriage as evidence of a good faith marriage. He notes that he listed D-S- as one of his "faves" on his cellular phone in August 2007, shortly after meeting her, and that the couple sent a high volume of text messages weeks before the divorce action in August 2008 trying to work things out. The petitioner points out the number of restraining orders he and D-S- placed against each other during the marriage and the subsequent canceling of the restraining orders as evidence they wanted to work things out and stay married. The petitioner also asserts that his taking a risk in violating the restraining orders against him proves his love was stronger than the fear of arrest or negative immigration consequences. The petitioner notes he also placed restraining orders against D-S-'s former boyfriend prior to and during the marriage instead of just walking away which again he claims is evidence of his good faith marriage. The petitioner also references the division of the credit card debt in the divorce proceedings as evidence that both parties used the credit cards and thus is indicative of a good faith marriage. The petitioner provides a number of pictures drawn by D-S- and photos he claims were exchanged online during the time the couple dated and was married. The petitioner provides copies of love letters he claims to have sent to D-S- prior to and during the marriage, as well as poems/songs written to or for D-S-.

Upon review, the petitioner has not provided probative testimony that establishes his intent when entering into the marriage. The AAO acknowledges the number of exhibits the petitioner provides regarding love letters, poetry, songs, and gift exchanges; however, the petitioner does not provide the information necessary to ascertain his actual intent when entering the marriage. The record shows the petitioner and D-S- continued to be in contact subsequent to their divorce; thus, it is not possible to determine when the love letters, poetry, songs, and gift exchanges were made and for what purpose. Although the petitioner testifies of his love for D-S- and his actions to try to continue the marriage, the petitioner's initial testimony was not detailed and his response to the RFE included little testimony of the circumstances of the couple's courtship, their wedding, or their shared experiences except as it related to the claims of his former spouse's mental disorder. On appeal, the petitioner does not reference his commute to San Diego to begin the relationship and the subsequent interactions of the couple in light of the long distance relationship. The record includes inconsistent testimony regarding his visits to San Diego and staying at her parent's house. For example, he indicates that her parents were very conservative so he could not stay at her house, yet his mother in her testimony declared that he spent weekends with D-S- in San Diego. He does not explain how the couple frequented the gym together. The record also includes a July 7, 2009 evaluation prepared by [REDACTED] who indicated that the petitioner agreed to move in with D-S- prior to their marriage. The petitioner, however, in his statements to United States Citizenship and Immigration Services (USCIS) does not reference the couple's living arrangements prior to marriage or provide other information expounding upon the logistics of the couple's relationship prior to marriage. The petitioner's reference to the number of restraining orders and cancellation of

the restraining orders between the couple does not offer insight into his good faith intent either before or during the marriage.

The record lacks consistent, probative detailed testimony regarding the couple's initial meeting and their subsequent courtship. Upon review of the totality of the record, the petitioner has not provided probative testimony of the couple's initial courtship, their shared residences, their decision to marry, or their shared experiences sufficient to ascertain or otherwise provide insight into his intent when entering into the marriage. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has not established that she jointly resided with the claimed abusive spouse or that she entered into the marriage in good faith. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.