



U.S. Citizenship
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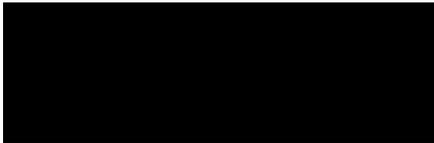
Office: VERMONT SERVICE CENTER

File:

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:



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 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 he had jointly resided with the United States Citizen (USC) spouse or that he had entered into the marriage in good faith. On appeal, the petitioner submits an additional photograph and four additional statements. 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.

* * *

(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.

* * *

(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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims he entered the United States in or about 1991. He married C-M-,¹ the claimed abusive United States Citizen (USC), on December 9, 2006. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on September 13, 2010. 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 he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion. Counsel states on the Form I-290B that a brief and additional evidence are attached. The record on appeal does not include a brief but includes four additional statements. The record is considered complete.

¹ Name withheld to protect the individual's identity.

Joint Residence

The director in this matter pointed out the deficiencies in the evidence, including the documentary evidence submitted by the petitioner and the statements submitted by the petitioner and others on his behalf. Neither the petitioner nor counsel addresses this issue on appeal. The September 15, 2011 statement of [REDACTED] certifies that she married the couple on December 9, 2005² in South Carolina. The September 14, 2011 statement of [REDACTED] the September 15, 2011 statement of [REDACTED] and the September 15, 2011 statement of [REDACTED] do not provide any information regarding the couple's joint residence.

Upon review of the evidence submitted on appeal, the petitioner has not overcome the director's determination that he failed to establish that he jointly resided with his USC spouse. The record does not include probative testimony or other evidence establishing that the petitioner jointly resided with his USC spouse.

Good Faith Entry into Marriage

In the petitioner's statement appended to the petition, he indicated that he met his USC spouse through his ex-girlfriend in 2004. He noted that after he had broken up with his girlfriend he saw C-D- at her workplace and they exchanged phone numbers and they started talking. He indicated that two months after the couple started going out, C-D- told him she was pregnant and that they needed to get married. The petitioner noted that C-D- wanted to be married at his aunt's restaurant and he complied with her wishes. The remainder of the petitioner's statement relates to his claims of abuse.

On appeal, the petitioner submits the September 14, 2011 statement of [REDACTED] the September 15, 2011 statement of [REDACTED] and the September 15, 2011 statement of [REDACTED] [REDACTED] indicates she attended the couple's wedding and her belief that the couple married for love. She notes that she saw them at various places together after the wedding and saw that they were happy together. [REDACTED] declares that he is the uncle of the petitioner and was his groomsman at the wedding and that the petitioner told him he loved C-D-. [REDACTED] also reports that he attended cook outs and holidays with the couple and family and knew that his nephew was sad when C-D- attacked him. [REDACTED] states that the couple married at her restaurant and that it seemed like a happy marriage and expresses her surprise that the couple separated as they seemed the happiest couple. The petitioner also re-submits the evidence provided in response to the director's RFE.

The director discussed the deficiencies of the evidence previously submitted and we concur with his determination that the testimony and documentary evidence presented did not establish that the petitioner entered into the marriage in good faith. Upon review of the evidence submitted on appeal, the declarants speak generally of attending the wedding and believing that the couple married for love and were happy together. The declarants do not provide probative testimony of their observations of the couple or other evidence that assists in establishing the intent of the

² The marriage certificate in the record indicates the marriage occurred on December 9, 2006.

petitioner when entering into the marriage. The petitioner does not provide further testimony on appeal regarding his intent when entering into the marriage and his previous statement does not describe the couple's interactions during the courtship nor does he provide probative testimony regarding the couple's shared experiences except as it relates to his claim of abuse. The petitioner's testimony lacks probative detail that provides insight into his intentions when entering into the marriage. General statements are insufficient to establish intent in this regard. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his 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 he jointly resided with the claimed abusive spouse or that he 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.