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U.S. Citizenship
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Services

B9



FILE:



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Date:

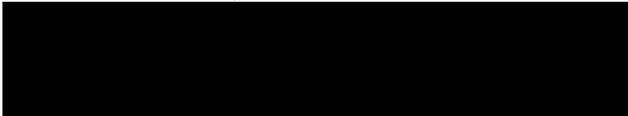
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DEC 14 2004

IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for Special Immigrant Battered 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Croatia who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

The director denied the petition after determining that the petitioner had failed to submit evidence, as had been requested, to establish eligibility for the benefit sought.

On appeal, the petitioner submits a statement and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that-

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the evidence on the record, the petitioner entered the United States as a B-2 visitor for pleasure on February 2, 2001. The petitioner wed U.S. citizen [REDACTED] on January 25, 2002 in South Lake Tahoe, California. The petitioner's spouse filed a Form I-130 petition on her behalf on February 25, 2002. On January 10, 2003, the petitioner filed a Form I-360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

Because the evidence contained in the record did not establish the petitioner's eligibility for the benefit sought, she was requested on September 22, 2003, to submit evidence that she had resided with her spouse, had been abused or subjected to extreme cruelty by her spouse, that she married her spouse in good faith and that she is a person of good moral character. The request for additional evidence was sent to the petitioner at the address she listed on the Form I-360 petition. The director granted the petitioner 60 days to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. The petitioner failed to respond within the 60 days. The director denied the Form I-360 petition on April 29, 2004, approximately seven months after the request for additional evidence.

On appeal, the petitioner stated that she had never received the request for additional evidence and that she had informed Citizenship and Immigration Services (CIS) of her change of address. She indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that she would send a brief and/or evidence within 30 days of filing the appeal. On appeal, the petitioner responded to the request for additional evidence.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

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.

The evidence on the record relating to the bona fides of the marriage is as follows:

- The petitioner's statement.

- The petitioner's marriage certificate.

The petitioner indicated in her statement that she and her husband had a short courtship. She provided no further information regarding her courtship or how she met her husband.

The petitioner failed to submit evidence of insurance policies in which the petitioner or her husband is named as the beneficiary. She failed to submit tax records or other financial records showing that the petitioner and her husband shared financial responsibilities. She provided no evidence that she and her husband acquired joint ownership of property. No children were born of the marriage. The evidence is insufficient to establish that the petitioner wed her U.S. citizen spouse in good faith.

The sole evidence submitted to establish that the petitioner resided with her spouse during the marriage is the petitioner's own statement. She failed to submit a joint lease or mortgage. She failed to submit insurance policies or bills listing a common address for the petitioner and her spouse. She failed to submit bank statements, tax records and financial documents listing a common address for the petitioner and her spouse. The evidence is insufficient to establish that the petitioner and her spouse resided together during the marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The petitioner provided her own statement regarding the alleged abuse she endured from her citizen spouse.

It is noted that the petitioner failed to file a complaint with the police against her spouse. She failed to submit reports and affidavits from court officials, counselors, or social workers. The petitioner failed to submit evidence that she sought psychological or medical treatment for any abuse she endured. She did not submit evidence that she sought refuge in a shelter or elsewhere. She did not obtain an order of protection against her spouse or take other legal steps to end the abuse. Her statements are insufficiently specific as to the exact harm she suffered from her spouse. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The evidence is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty perpetrated by the citizen spouse during the marriage.

The petitioner failed to submit any evidence to establish her good moral character with her initial filing or in response to the request for evidence. For this additional reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.