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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 02 2006
EAC 04 159 52367

IN RE: Petitioner: [redacted]

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:

[redacted]

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.

for Robert P. Wiemann, Director
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 is a native and citizen of Trinidad who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse. The director denied the petition because the record did not establish that the petitioner was battered or subjected to extreme cruelty by her former United States citizen spouse during their marriage or that she entered into the marriage in good faith. On appeal, counsel asserts that the director failed to give due consideration to evidence previously submitted and now submits additional documentation. Counsel's claim and the evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed for the reasons discussed below.

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 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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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 . . ., must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.
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> *(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 standard and requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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.

* * *

(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 evidence will be considered.

Battery or Extreme Cruelty

In this case, the record indicates that the petitioner married United States citizen [redacted] on August 20, 1999 in New York City. The couple was divorced on August 27, 2004. With her Form I-360, the petitioner submitted a letter in which she states that problems arose during her marriage to Mr [redacted] because: his parents lived with them and they did not have any privacy, Mr [redacted] forced her to quit her job, she had to cook and do housework for her spouse and his parents; and because of the religious differences between her and Mr. [redacted] and his parents and the couple's eventual lack of intimacy.

The petitioner submitted no evidence to corroborate her statements and on January 10, 2005 the director issued a Request for Evidence (RFE) asking the petitioner to submit documentation that she was battered or subjected to extreme cruelty by Mr. [redacted] during their marriage. The second and third page of the RFE listed specific examples of documents that the petitioner could submit to establish the requisite abuse. The petitioner submitted no evidence in response to this request.

On appeal, the petitioner submits a second statement and letters from two friends. Neither counsel nor the petitioner explain why this evidence was not submitted in response to the director's Request for Evidence, but is not submitted on appeal. In her statement, the petitioner explains that Mr. [redacted] forced her to participate

in his family's religious activities and that she was not allowed to wear her regular clothing. She states that Mr. made her give him all her paychecks and that he told her he was depositing the money into a savings account to buy a home of their own and that she could not be named on the account because of her immigration status. The petitioner again states that her ex-husband eventually forced her to quit her job. She further explains that whenever she expressed her opinion or needs, Mr would become more aggressive and manipulative towards her and use her immigration status as a threat or a weapon. The petitioner provides no specific examples of such behavior.

the petitioner's friend, states that the petitioner told her "the conditions in which she was living and the way and his family was." Ms. explains that the petitioner would hide so that she could call Ms. and that when she decided to leave Mr. she stayed with Ms a friend of the petitioner and Mr. states that when the couple was married, he often went out with Mr. but the petitioner would always stay home. Mr. urther states that Mr told him that a woman's place was in the house and that is why his wife never came out with him. While their letters confirm that the petitioner lived in marital discord, neither Mr. nor Ms describe actions by Mr. against his wife that they witnessed that amount to battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). They also fail to describe any physical or emotional behavior of the petitioner that they witnessed that could be attributed to her subjection to battery or extreme cruelty by Mr. Although Ms. states that it was "very difficult fo to overcome her divorce and at time [sic] she was very depressed," Ms ndicates that the petitioner's occasional depression was due to her divorce, not battery or extreme cruelty inflicted upon her by Mr.

Apart from these two letters and her own statements, the petitioner submitted no evidence to corroborate her claim of abuse. The record contains no evidence that the petitioner ever called the police, took legal steps to end her ex-husband's alleged abuse, sought help from clergy or a social service agency, or obtained medical or psychological treatment for the effect's of Mr. alleged abuse. The petitioner submitted no other documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The evidence submitted fails to establish that Mr battered or subjected the petitioner to extreme cruelty during their marriage as required by section 204(a)(1)(A)(iii) of the Act.

Good Faith Marriage

The petitioner initially submitted no evidence that she entered into her marriage with Mr. in good faith. Accordingly, in his January 10, 2005 RFE the director asked the petitioner to submit evidence of her good faith marriage. On March 11, 2005, the petitioner submitted copies of photographs, insurance cards, a membership card, a credit card, greeting cards, medical records, and income tax documents. In his decision, the director discussed the insufficiency of this evidence and that discussion will not be repeated here.

On appeal, the petitioner submits her second statement, her mother's written declaration, evidence that she had prescription coverage from 2000 to 2002 under her husband's insurance plan, medical records from September 2001 that list the petitioner and Mr as husband and wife, a printout concerning one of the former couple's federal tax returns, and a copy of an envelope forwarded to the petitioner from her marital residence to her current residence. These documents fail to establish that the petitioner entered into the marriage in good faith.

In her second statement, the petitioner explains that she fell in love with her ex-husband at first sight and that they visited each other on many occasions when she was still living in Trinidad. The petitioner does not state when or how she met her ex-husband. She explains that although they had a long distance relationship, they became close and were eventually engaged in 1999. She states, "I felt in my heart as if he was the person to spend the rest of my life with." The petitioner does not describe in any detail the former couple's courtship, decision to marry, wedding ceremony, honeymoon (if any), or any shared experiences that would demonstrate her own good faith in entering the marriage.

In her declaration, the petitioner's mother, states that she, her husband and their children visited the petitioner and Mr several times; that her husband attended the former couple's engagement party; she attended their wedding; that she and her family entertained Mr. parents during one of their visits to Trinidad; and that Mr once spent about two weeks at the family's home in Trinidad. Ms statement is unsupported by any other documents in the record and does not discuss the petitioner's intentions or behavior, as observed by Ms. that would indicate the petitioner's good faith in marrying Mr.

The tax return printout submitted on appeal simply confirms that the former couple submitted one federal tax return as married filing jointly. As discussed by the director, the tax returns submitted with the petitioner's RFE response show that they were filed in February 2005, after the couple was divorced and consequently do not demonstrate that the petitioner entered into her marriage with Mr. in good faith. The forwarded envelope submitted on appeal indicates that the petitioner no longer resides at her former marital residence, but does not demonstrate her good faith entry into her marriage with Mr

The only documents that evidence the former couple's marital relationship (apart from their marriage certificate and divorce decree) are the medical records and prescription coverage letter submitted on appeal. These documents indicate that the petitioner was covered under Mr. health insurance from 2000 to September 2001 and that she was covered under his prescription plan from 2000 to May 2002. These documents alone do not demonstrate that the petitioner entered into her marriage with Mr n good faith as required by section 204(a)(1)(A)(iii) of the Act.

The petitioner has not established that she was battered or subjected to extreme cruelty by her former United States citizen spouse or that she entered into her marriage with her former spouse in good faith. She is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and her self-petition must be denied.

The burden of proof in visa petition 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.