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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

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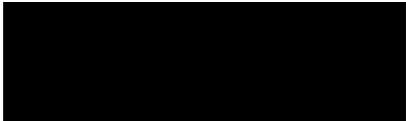


FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: AUG 10 2005
SRC 01 264 52579

IN RE: Petitioner: [Redacted]
Beneficiary: [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:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner 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).

The record reflects that the petitioner wed United States citizen [REDACTED] on July 26, 2000 and September 12, 2000 in New York. The petitioner and her citizen spouse were divorced on June 22, 2001 in Miami, Florida. The instant petition was filed on or about September 10, 2001.

The director denied the petition on April 15, 2004, based on a determination that the petitioner failed to establish that she is a person of good moral character and that she entered into the marriage in good faith.

On May 17, 2004, the petitioner filed an appeal to the director's decision. The AAO dismissed the appeal on December 14, 2002, concurring with the director's two stated grounds for denial. In addition, the AAO found that the petitioner had failed to establish that her marriage to her citizen spouse was terminated because of abuse.

The petitioner, through counsel, filed the instant motion to reopen on January 13, 2005.

The regulation at 8 C.F.R. § 103.5(a)(2) states that a "motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

In a statement provided with her motion, counsel claims the petitioner's failure to submit a police clearance from New York "was an oversight" of counsel and the "petitioner should not be penalized for this." We do not agree. As cited in our previous decision, the regulation requires the petitioner to submit additional evidence requested by the director. *See* 8 C.F.R. §§ 103.2(b)(8), (12), and (14). In this instance, we emphasize that the director did not request some vague class of documentation, but rather specific documents, leaving no ambiguity as to what documents were required. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.* Counsel's attempt to claim responsibility for failing to comply with the specific request does not relieve the petitioner of the burden of establishing eligibility.

As it relates to the director's finding that the petitioner failed to establish that she entered into the marriage in good faith, counsel argues that "the over sixteen months of courtship" was "unfairly" dismissed by the director. Counsel further states the fact that the petitioner and her spouse divorced their prior spouses in order to marry each other was "overlooked" by the director. In her decision, the director reviewed and discussed the petitioner's evidence and the lack thereof. We note that the director gave the petitioner an opportunity to submit additional documentation but that the petitioner indicated her wish to have the case adjudicated based upon the record before the director. In its previous decision, the AAO listed the documentation contained in the record related to the petitioner's good faith marriage¹ and determined that the affidavits submitted in support of the petition contained "scant detail regarding the petitioner and her husband's courtship and

¹ See pages 3 and 4 of the AAO's decision.

marriage” and that there was no evidence to establish joint tax records, insurance or other financial responsibilities. The fact that the director and the AAO found the record insufficient to establish eligibility does not mean that evidence was “overlooked.”

Regarding the lack of joint accounts, counsel asserts that it “is well known that without a social security card no bank or credit card company will open an account.” It is unclear why counsel would make such an argument given the fact that counsel’s previous submission included a copy of a bank statement from Washington Mutual Bank in the petitioner’s name only. Clearly, the petitioner was able to open a bank account. There is no explanation for the lack of evidence as to why the account was opened in the petitioner’s name only or if opened prior to the marriage, why the petitioner’s spouse was not added to this account.

Counsel then refers to evidence that the petitioner was placed on her husband’s credit card and that the couple “purchased real property together.” Upon review of the record, we find no evidence from “Chase Manhattan credit card” to corroborate counsel’s claim. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Further, despite counsel’s claim that the petitioner and her spouse “purchased real property together,” counsel acknowledges that the petitioner’s name “did not appear on the contract.” Without evidence of a deed, mortgage statements, or other evidence to show that the property was jointly owned by both parties, counsel’s statement that they purchased this property together cannot be substantiated. While the “release” referred to by counsel indicates that the petitioner would receive \$10,000 upon the sale of the condominium, the release is not evidence that the condominium was jointly owned by the petitioner and her spouse.

The remaining issue relates to the additional finding of the AAO that the petitioner failed to establish her marriage was terminated by abuse, counsel states:

We think, that it is the intent of this Petition to protect victims of domestic violence, not to forcefully keep them from in such dangerous and humiliating relationships. The documentation submitted from the local Women’s Shelter seems to have been disregarded by the Director.

Counsel does not provide any documentation such as legislative history or case law to support her assertion about the “intent of the petition.” As previously noted, counsel’s unsupported statements are not evidence. *Id.* Moreover, counsel’s argument that the director “disregarded” the evidence from the women’s shelter has no relevance to the issue of whether the petitioner has established that the termination of her marriage was due to the claimed abuse. Whether the petitioner was abused is a separate issue from the issue of whether the petitioner terminated her marriage because of such abuse. The record indicates that it was the petitioner’s spouse who initiated divorce proceedings based upon the marriage being “irretrievably broken.” As such, the

record does not lead to a finding that the petitioner demonstrated “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.”²

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.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed. The petition is denied.

² See section 204(a)(1)(A)(iii)(II)(I)(aa)(CC)(ccc) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii).