

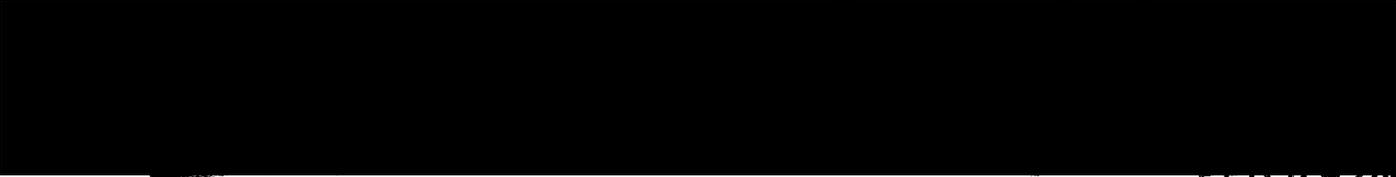
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U.S. Citizenship
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Office: VERMONT SERVICE CENTER

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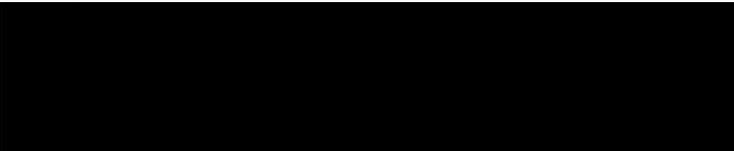
Petitioner:
Beneficiary:



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:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the special preference visa petition. Upon further review, the Acting Director, Vermont Service Center, determined that the petition had been approved in error. The acting director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native of the former Soviet Union and a citizen of Russia 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.

According to the evidence on the record, the petitioner initially entered the United States on a K-1 fiancé visa on July 20, 1995. She wed U.S. citizen [REDACTED] on September 9, 1995 in Nevada. [REDACTED] filed a Form I-130 petition on the petitioner's behalf on October 5, 1995. He subsequently withdrew the petition on February 5, 1996. The marriage was annulled on September 3, 1996 due to fraud. The petitioner last entered the United States on a K-1 fiancé visa on September 12, 2000. The petitioner wed U.S. citizen [REDACTED] registered sex offender, on September 25, 2000 in Maryland. The petitioner was 25 years old and her husband was 56 years old at the time of their marriage. The petitioner filed a Form I-485 application to register permanent residence or adjust status on October 24, 2000. According to the evidence on the record, the petitioner and her spouse were summoned for an interview on March 14, 2001 in connection with her application for adjustment of status. The petitioner filed a Form I-360 self-petition on April 4, 2002, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage. On June 6, 2003, the director approved the petition. On February 2, 2004, the acting director issued a notice of intent to revoke (NOIR) advising the petitioner that her "good faith marriage and abuse" were in question. The acting director determined that the petitioner failed to respond to the NOIR and on June 22, 2004, and issued a final notice of revocation.

On appeal, counsel for the petitioner submits a brief and additional evidence. Counsel further asserts that he had previously responded to the NOIR.

Section 205 of the Act, 8 U.S.C. 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

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 or her 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 . . . 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; [and]

* * *

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

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

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 abused 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.

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

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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

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 regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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 qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that she has resided with her citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she had entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by, her citizen spouse, the acting director issued a NOIR advising the petitioner of the deficiencies in the record and allowing 60 days to respond. In the NOIR, the acting director indicated that new evidence had come to light that indicated that the petitioner

did not have a bona fide marriage, namely, evidence that she had placed single ads on the Internet while she was presumably residing with her husband.

In rebuttal, the petitioner stated that she had placed a single Yahoo ad because she was lonely and that the language was canned. She further stated that her husband did not become abusive until after he was released from jail in April 2001 and June 2001.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her United States citizen spouse. The evidence consists of the following:

- The petitioner's statements.
- A statement from the petitioner's stepdaughter.
- Photographs of the petitioner with bruises.
- A psychiatrist's report dated May 5, 2004, that concludes that the petitioner is suffering from battered woman's syndrome and personality disorder traits.

The psychiatrist's report indicates that the petitioner was abused as a child and that her behavior is "completely consistent with what one would expect from a battered woman." The report further indicates that "[a]ccording to the [petitioner, her husband] became very abusive toward her, physically abusing her and preventing her from eating or cleaning herself." It is noted that the report does not specifically state how and when the husband abused the petitioner.

The AAO cannot determine the cause of the bruises shown on the petitioner's body in the absence of corroborating evidence, such as a medical report.

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, social workers or police. The petitioner failed to 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. She failed to submit an explicit explanation as to the cause of the bruises on her body. In review, the evidence is insufficient to establish that the petitioner was abused by her citizen spouse.

The director determined and the AAO concurs that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). The evidence consists of the following:

- The petitioner's statements.
- Photocopies of photographs of the petitioner and her spouse.
- A single statement of a joint bank account.
- Three one-paragraph letters from the petitioner's mother-in-law, her stepdaughter and stepson indicating that the petitioner and her husband were in love with one another.

It is noted that the petitioner failed to submit evidence of insurance policies in which she or her spouse is named as the beneficiary. She failed to submit tax records, utility bills and other documents indicating that she shared

financial assets and liabilities with her husband. No children were born of the marriage. The petitioner failed to submit evidence that she and her spouse jointly owned property. The affidavits she submitted were insufficiently specific to establish the bona fides of the marriage. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

Beyond the director's decision, it is noted that the petitioner was married to a U.S. citizen prior to the instant marriage and that a California court declared that marriage annulled on the ground of fraud; therefore the petitioner may be ineligible for the classification sought if found to have entered into the marriage for the purpose of evading the immigration laws. Section 204(c) of the Act, 8 U.S.C. § 1154(c).

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.