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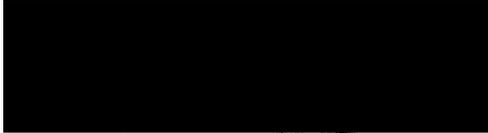


U.S. Citizenship
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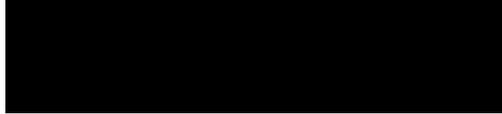
EAC 03 107 52824

Office: VERMONT SERVICE CENTER

Date:

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

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center denied the visa petition. The petitioner filed a late appeal, which the director treated as a motion to reopen. The director reopened the matter and denied the petition. 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 Colombia 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, finding that the petitioner failed to establish that she entered into the marriage in good faith.

On appeal, the petitioner submits a statement.

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)(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.

According to the evidence on the record, the petitioner wed [REDACTED] U.S. citizen, on August 9, 2001 in New York City. The petitioner's spouse filed a Form I-130 petition on her behalf on February 13, 2002. The petitioner concurrently filed a Form I-485 application to register permanent residence or adjust status. On February 18, 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, her U.S. citizen spouse during their marriage.

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 her husband is a U.S. citizen, that she entered into the marriage in good faith and resided with her spouse, she was requested on December 19, 2003 to submit additional evidence. The director listed evidence the petitioner could submit to establish that she had resided with her spouse, that she married her spouse in good faith, and that she is a person of good moral character.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. That discussion will not be repeated here.

On appeal, counsel for the petitioner submits a statement asserting that the evidence on the record is sufficient to establish the bona fides of her marriage and that the Service (now Citizenship and Immigration Services (CIS)) misinterpreted the affidavits submitted.

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). In a request for additional evidence, the

director listed the types of evidence that would show that the petitioner had married her husband in good faith. The petitioner provided CIS with her own statement. The evidence consists of five affidavits of acquaintances of the petitioner and photographs of the petitioner and her citizen spouse.

In her decision, the director noted that the petitioner indicated that she had resided with her husband from August 2001 until December 2002. The director further noted that the affidavits submitted on appeal contradict the information provided in the petition. Two of the affidavits, dated March 22, 2004 and March 25, 2004, state that the petitioner and her husband are "a truly happy and solid couple who have been living together in harmony for the entire time that I have known them." The petitioner indicated that she and her husband separated in December 2002. On appeal, the petitioner asserts that CIS misinterpreted the affidavits and that the affiants establish that she and her spouse had a solid marriage but did not imply that the petitioner's relationship with her husband continued until March 2004. The petitioner's assertion is not persuasive particularly in light of the dearth of evidence establishing the bona fides of the marriage. The petitioner failed to submit insurance policies in which the petitioner or her spouse is named as the beneficiary. She failed to submit bank statements, tax records and other financial documents showing that she shared accounts with her spouse. She failed to submit evidence of joint ownership of property. No children were born of the marriage. The affidavits submitted provide little information verifying the petitioner's relationship with her spouse. Photographs are not persuasive evidence of a good faith 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, the petitioner failed to establish that she is a person of good moral character as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(F). The evidence on the record indicates that the New York City police arrested the petitioner on September 28, 2003 and charged her with harassment (240.26) and assault in the third degree (120.00). On January 23, 2004, she pled guilty to attempted assault in the third degree (110-120.00). On March 24, 2004, she pled guilty to the harassment charge (Docket # [REDACTED]). The petitioner failed to submit a police clearance and her own statement. See 8 C.F.R. § 204.2(c)(2)(v).

The director determined that the petitioner established that she had been battered by, or had been the subject of extreme cruelty perpetrated by, the citizen spouse during the marriage. This part of the director's decision shall be withdrawn. The evidence on the record consists of a single walk-in police report and a temporary restraining order. It is noted that the petitioner failed to obtain a permanent restraining order. 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. 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.

[REDACTED]