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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
EAC 03 179 51407

Office: VERMONT SERVICE CENTER

Date: JUL 22 2005

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:

[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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a 27-year old female native and citizen of Trinidad 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 the petitioner failed to establish that she entered into the marriage in good faith.

The petitioner submits a timely appeal with no additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, 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.

Further, the regulation at 8 C.F.R. § 204.2(c)(2)(ix) states:

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.

According to the evidence in the record, the petitioner wed United States citizen [REDACTED] in Montclair, New Jersey on August 1, 2000. On May 27, 2003, the instant petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage. The petitioner claims to have resided with her spouse from May 2000 until March 2001.

As evidence of her good faith marriage, the petitioner submitted the following documentation concurrent with the filing of her petition:

- The petitioner's statement.
- A copy of a single envelope addressed to the petitioner's spouse at [REDACTED]
- Copies of six envelopes addressed to the petitioner at [REDACTED]
- A copy of a letter from the Internal Revenue Service indicating the filing of joint tax returns for the 2000 tax year.
- A letter from the petitioner's friend referencing the petitioner's marriage.
- Photographs of the petitioner and her spouse.

We note that the envelopes submitted are all postmarked *after* the date the petitioner claims she stopped residing with her spouse. In fact, in the affidavit submitted by the petitioner in response to the director's request for evidence, the petitioner states the following about her places of residence:

I filed my self-petition in May of 2003. Therefore, for the period between May 2000 and May 2003 I lived at the following places. From May 2000 until March 2001 I lived at [REDACTED], Uniontown, PA [REDACTED] with my abuse spouse. *Then after leaving my abuser spouse* at this time I moved to [REDACTED] New Jersey [REDACTED]

We further note that the photographs of the petitioner and her spouse are uncaptioned and undated. While the photographs indicate that the petitioner and her spouse were together at a particular time and place, they do not establish that the petitioner entered her marriage in good faith.

On May 13, 2004, the director found this information to be insufficient to establish eligibility and requested the petitioner to submit additional evidence to establish her claimed abuse, that she was a person of good moral

character and that she entered into her marriage in good faith. The director specifically listed the type of evidence the petitioner could submit to establish that she entered into her marriage in good faith, to include:

- Insurance policies in which you or your spouse is named as the beneficiary.
- Bank statements, tax records and other documents that show you share accounts and other similar responsibilities.
- Evidence of your courtship, wedding ceremony, residences, special events, etc.
- Evidence of joint ownership of property (such as a home, automobile, etc.).
- Birth certificates of children born to you and your spouse.
- Affidavits of friends and family who can provide specific information verifying your relationship with your spouse.

The petitioner responded to the director's request on July 12, 2004, by submitting documents related to petitioner's claim of abuse and good moral character. The petitioner, through counsel, requested additional time in which to present further evidence.

The petitioner responded to the director's request for a second time on July 15, 2004. At that time the petitioner submitted more evidence related to her good moral character. No further evidence was submitted to document the petitioner's good faith marriage.

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

In support of the filing of the appeal, counsel submits a letter in which he states:

The petitioner is a classic VAWA self-petitioner. She receives counseling and services from the Center for Women & Families, a domestic violence not for profit, pro bono legal assistance from counsel, shelter from a home that assists victims of domestic violence, and ongoing abuse by her United States citizen spouse. There is no doubt that [the petitioner] is a victim of domestic violence who merits the protection of VAWA and its benefits.

Counsel then refers to previously submitted documentation in which the petitioner was issued a temporary order of protection from her citizen spouse and asks, "Why would a New York Family Court continue to issue orders of protection and permit the prosecution of the domestic abuser spouse if [the petitioner] were not still in an ongoing marital relationship that was entered in good faith." Counsel further argues, "there is no rhyme or reason for the [director's] conclusion in this matter and respectfully it deserves a reversal." Counsel's arguments seem to focus on the petitioner's claim of abuse, which was *not* contested by the director rather than addressing the single negative finding of the director that the petitioner failed to establish that she *entered* into her marriage in good faith.

On the Form I-290B Notice of Appeal, filed on January 13, 2005, counsel for the petitioner indicated that he would be sending a brief and/or evidence to the AAO within 30 days. On June 3, 2005, nearly five months after the filing of the appeal, counsel submits additional evidence in support of the appeal. The regulations do not state or imply that the petitioner may freely supplement the record up until the date of appellate adjudication without making a written request and demonstrating good cause. 8 C.F.R. § 103.3(a)(2)(vii). In this instance, the

petitioner failed to request additional time beyond the 30 days initially indicated and also failed to provide good cause for the late submission of such documents.

Regardless, we find the additional evidence is not sufficient to establish eligibility. The majority of the documentation submitted on appeal consists of evidence previously submitted. The only new evidence submitted on appeal consists of two pieces of correspondence and copies of several photographs¹ of the petitioner and her spouse in "social" settings. The correspondence is dated 2005 and is addressed to the petitioner at [REDACTED] Uniontown, PA." As such, it is unclear how counsel considers such evidence to be persuasive evidence of the petitioner's good faith marriage. In regard to the photographs, as noted previously, while the petitioner's photographs are evidence that the petitioner and her spouse were together at a particular place and time, they do not establish that they were engaged in a bona fide marriage. We note that the photographs submitted on appeal are also undated and uncaptioned and do not all contain both the petitioner and her spouse.

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 appeal is dismissed.

¹ In the brief dated May 22, 2003, submitted by counsel in support of the Form I-360 petition, counsel states that exhibit number (12) consists of "wedding photos and other special photos of self-petitioner and United States citizen abuser spouse." However, contrary to this assertion, the record lacks evidence of such photos prior to their submission on appeal. The page delineating exhibit number (12) is followed by a police report dated August 12, 1998, not the photos specified by counsel. The police report is listed by counsel as exhibit (13).