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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 16 2005

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.

for
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a 33-year old female native and citizen of Bulgaria 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 acting director denied the petition, finding that the petitioner failed to establish that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

The petitioner submits a timely appeal.

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.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] in New York City, New York on April 19, 2000. On May 29, 2003, a self-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 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).

Because the petitioner furnished insufficient evidence to establish that she has been battered by or subjected to extreme cruelty by her citizen spouse, she was requested on April 30, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish that she was battered or subjected to extreme mental cruelty by her spouse.

The director, in her 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.

On appeal, the petitioner submits a second statement and an affidavit from a friend.

In her statement on appeal, the petitioner now claims that the reason she did not allege any actual physical abuse in her original statement was because she thought "if [she gave] too much details about [her spouse's] inhuman behavior he will be called and put to the jail for spouse abuse and [she] didn't want that to happen [sic] because he is gay and he will not tolerate the jail sentenced [sic]."

The petitioner goes on to detail four instances in which her spouse slapped her in the face, threw things at her, yelled at her, and choked her. The affidavit, submitted by [REDACTED] is written to support the petitioner's claim that her husband attempted to choke her. The affiant indicates that the petitioner came to the affiant's home and told her that her husband tried to "[choke] her with a pillow." The affiant further states that the petitioner's spouse is "a gay but his abnormal relationship is a disaster."

We are not persuaded by the petitioner's appellate submission. We find the petitioner's newfound claims of specific incidents of physical abuse lack credibility and corroboration. In her affidavit, [REDACTED] does not indicate that she witnessed the alleged physical abuse and describes the particular incident as it was told to her by the petitioner. Accordingly, we find insufficient evidence to establish the petitioner was battered by her spouse.

Further, although we do not dispute the allegation that the petitioner's spouse is gay and has carried on affairs with other men, such facts are insufficient to establish that the abuse the petitioner suffered rose to the level of battery or extreme cruelty.

Beyond the decision of the director, the petitioner failed to establish that her spouse is a citizen of the United States. In the director's request for evidence, the petitioner was specifically asked for evidence of the petitioner's spouse's citizenship. In response, the petitioner submitted a letter indicating that she requested a copy of her spouse's birth certificate from the Department of Health Services, Office of Vital Records in Sacramento, California.

On August 9, 2004, the petitioner submitted a copy of a document purported to be her spouse's birth certificate. The certificate, however, confirms the birth of [REDACTED] not [REDACTED]. The petitioner indicates she "was told by [her spouse's] parents that [he] has changed his last name" but that "there is no record of the name change which is available" to her.

Without further evidence of the petitioner's spouse's name change, we find the birth certificate contained in the record to be insufficient evidence to establish that the petitioner is the spouse of a citizen of the United States and that she is, therefore, eligible for immigrant classification based upon that relationship. 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.