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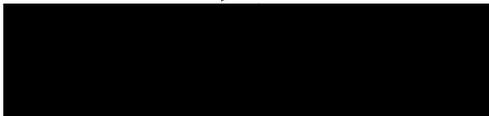
Office: VERMONT SERVICE CENTER

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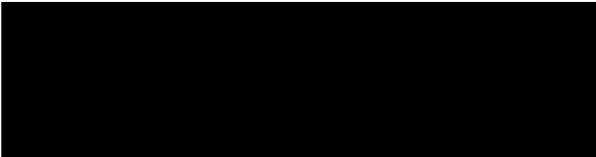
Petitioner:



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, Director
Administrative Appeals Office

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

The petitioner is a 62-year old native of Turkmenistan who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

According to the evidence contained in the record, the petitioner wed her United States citizen spouse on April 19, 1997, in Moscow, Russia. On August 20, 1997, the petitioner's spouse filed a Form I-130 in the petitioner's behalf. The petition was approved on August 24, 1998. On September 21, 2000, the petitioner and her spouse filed a Form I-751 to remove the conditions on their marriage. The petition was denied on September 19, 2002. The petitioner filed the instant petition on June 11, 2003, and claims to have resided with her citizen spouse from April 1997 until January 2002. In a decision dated September 16, 2004, the director denied the Form I-360 petition, finding that the petitioner failed to establish that she entered into the qualifying marriage in good faith and that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On October 18, 2004, the petitioner, through counsel submitted a timely appeal, requesting an additional 30 days in which to submit a brief and/or evidence to support the appeal. On December 9, 2004, counsel provided a brief with additional evidence and explained that the reason for the delay in providing the supplementing material was due to reasons beyond counsel's and the petitioner's control, namely the petitioner's health. On January 11, 2005, counsel submitted further documentation to establish the petitioner's health condition.

We note that although the regulations do not allow the petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed, in this instance, good cause has been shown for the multiple filings as well as the filing beyond the initial 30 days requested.

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)(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 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.

Further, 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 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) also requires the petitioner to show that she entered into the marriage to the citizen in good faith.

At the time of filing, the petitioner furnished insufficient evidence to establish eligibility. As such, she was requested on May 13, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish she entered the marriage in good faith and that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

The petitioner, through counsel, responded to the director's request on July 28, 2004 by requesting an additional 60 days in which to produce the requested documents. Subsequently, on August 18, 2004, the petitioner responded to the director's request.

In her decision, the director thoroughly reviewed and discussed the evidence submitted by the petitioner in support of the petition, including the evidence submitted in response to the request for evidence. The discussion will not be repeated here.

On appeal, counsel claims the director erred in finding the petitioner was not a victim of extreme cruelty and that she failed to prove the bona fides of her marriage. Counsel also provides a lengthy discussion of the requirements of the Act and the bigamous marriage provision and asserts that the director erred in finding that the petitioner's marriage was not valid because the petitioner's spouse was married to another woman at the time of his marriage to the petitioner. However, the director's decision is not predicated, in any part, on the fact that the petitioner's marriage was not valid. Rather, as stated previously in this decision, the director's decision was based solely upon the petitioner's failure to establish that she entered into her marriage in good faith and that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse. Accordingly, we will not address the argument related to the bigamous marriage any further.

The evidence contained in the record related to the petitioner's bona fide marriage consists of the following:

- "Correspondence" between the petitioner and her spouse.
- Pictures of the petitioner and her spouse.
- Affidavits from a relative and acquaintances.

Of the four documents submitted as evidence of the "[c]ouples correspondence" prior to their marriage, only one letter has been signed by either the petitioner or her spouse. It is unclear what the other documents are or how they support counsel's claim that they evidence a good faith marriage.

Further, 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.

Finally, we do not find the affidavits support a finding that the petitioner entered into the marriage in good faith. The affiants indicate that they were aware of the petitioner's marriage. While we do not dispute that a marriage took place, however, the fact that a legal marriage took place does not establish that the marriage was entered into in good faith. The affidavits are general in nature and provide little detail about the petitioner's relationship prior to or during her marriage.

Counsel also claims that with the Form I-751 petition, copies of bank statements were submitted. While the record does contain a single bank statement, dated August 22, 2000, indicating a joint account at Commerce Bank, there is no evidence of the joint *use* of this account. The record does not contain copies of checks or evidence of withdrawals or deposits showing the petitioner and her spouse jointly accessed this account. The record also contains a single deposit ticket, dated January 19, 1999, for the Provident Savings Bank. There is no evidence that the account at this bank was a joint account, equally shared by the petitioner and her spouse.

Despite the fact that the petitioner claims to have resided with her spouse for nearly five years, the petitioner has not submitted adequate documentary evidence to substantiate the claim of a good faith marriage. Even if we were to accept counsel's claim that the lack of utility bills is due to the fact that the petitioner's spouse had sole responsibility for such bills, there is no explanation for the lack of other documentation, such as insurance policies in which the petitioner or her spouse were named as the beneficiary, tax records or other documents to show that they shared accounts and responsibilities, or evidence that they jointly owned or rented property.

As it relates to the director's finding regarding the lack of evidence related to the petitioner's claim that she has been battered by or the subject of extreme cruelty by her citizen spouse, counsel states:

In or about February of 2001, the [petitioner's spouse] suddenly and for [reasons] unknown to the petitioner . . . changed his attitude toward her and began treating her in rather inhumane and abusive way.

Counsel's description of the spouse's "inhumane" and "abusive" treatment includes the spouse's threats to have the petitioner deported and "threatening moves . . . inches short of punching" the petitioner. Counsel further claims that the spouse was "greedy," restrained communication between the petitioner and her son, and often yelled at the petitioner. Counsel does not provide any documentary evidence to support his statement; the 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). We note although the petitioner's affidavit indicates that she was abused and humiliated by her spouse, she does not provide specific details about such treatment. Instead, the petitioner makes general claims that she was "frightened," and "terrified" without providing any details or description of circumstances to demonstrate why she was fearful and "afraid to complain."

The most specific details contained in the petitioner's affidavit are related to the fact that her spouse was married previously, that he lied about his marital status, and had an affair. The petitioner also indicates that her spouse would yell at her about money and did not visit her in the hospital when she was sick.

The petitioner does not make any claim of physical abuse and we do not find that the description of the incidents with her spouse rises to the level of extreme cruelty. Moreover, none of the affidavits submitted in support of the petition makes any reference to the claimed abuse suffered by the petitioner. While one

affidavit mentions the fact that the petitioner was deceived about her spouse's marital status when she married him, the affiant does not indicate the basis of his knowledge or describe any abuse suffered by the petitioner.

In the report submitted by [REDACTED] MA, MSW, CSW, CPFT, PsyD, JD, based upon one interview with the petitioner, Dr. [REDACTED] indicates that the petitioner "suffered depression and anxiety as a result of the horror that she endured." Further, Dr. [REDACTED] despite never having met the petitioner's spouse, expresses his opinion that the spouse suffers from antisocial personality disorder, that he "displayed a failure to conform to social norms," was "repeatedly deceitful," did not display remorse or regret, "displayed impulsivity," and "irresponsibility," as well as a "glibness and superficial charm towards others." Dr. [REDACTED] concludes that the petitioner "has experienced physical, emotional, verbal, and instrumental abuse." Although we do not dispute the fact that the petitioner suffered from depression as the result of her spouse's betrayal, we do not find the evidence contained in the record is sufficient to establish that the treatment she received rose to the level of battery or extreme cruelty.

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 sustained that burden. Accordingly, the petition will be denied.

ORDER: The petition is denied.