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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 22 2005
EAC 02 276 54769

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:



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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a female native and citizen of Vietnam 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 evidence contained in the record did not establish eligibility.

The petitioner, through counsel, 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 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.

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 contained in the record, the petitioner entered the United States as a K-1 nonimmigrant on June 16, 2001. The petitioner wed United States citizen [REDACTED] in Fairfax, Virginia on July 2, 2001. On August 31, 2002, the instant 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 citizen spouse during their marriage.

In support of the petition, the petitioner submitted the following evidence:

- The petitioner's sworn statement.
- Three affidavits from acquaintances.
- A copy of the petitioner's Form I-94, Arrival and Departure Record.
- A document from the Fairfax County Police Department indicating that the petitioner has no adult arrest record.
- A copy of the petitioner's marriage certificate.
- A copy of the petitioner's joint tax return with her spouse for the 2001 tax year.

Because the petitioner furnished insufficient evidence to establish her eligibility, she was requested on June 3, 2003, to submit additional evidence. As it relates to the petitioner's claim of abuse, the director noted that the affidavits submitted were "very brief" and "do not contain sufficient detail to establish" the petitioner's claim of abuse. The director requested further evidence in the form of:

- Reports and affidavits from police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that the petitioner has sought refuge in a shelter for the abused.
- Photographs of injuries and affidavits from witnesses.
- A detailed and specific statement from the petitioner describing her relationship with her spouse and the type of abuse suffered and any after effects.

The director also requested further evidence to establish the petitioner's claim that she resided with her spouse and entered the marriage in good faith. The director indicated such evidence could include: joint leases,

mortgages, or rental agreements; insurance policies; utility bills; bank statements, tax statements, or other financial documents; affidavits from friends; evidence of the petitioner's courtship and married life.

On July 31, 2003, the petitioner, through counsel, requested an additional 60 days in which to submitted the requested documentation. On August 26, 2003, the director granted the petitioner's request for additional time.

On October 10, 2003, the petitioner responded to the director's request by submitting the following documents:

- A second sworn statement.
- Two affidavits from acquaintances regarding the alleged abuse.
- A letter from the IRS related to the petitioner's 2001 joint tax return.
- A letter from the IRS related to the petitioner's 2002 single tax return.

On June 3, 2004, the director issued a notice of intent to deny the petition indicating that the petitioner had failed to establish that she entered the marriage in good faith.

The petitioner did not respond to the director's notice of intent to deny and the director denied the petition on September 30, 2004, finding that there was insufficient evidence to support eligibility.

On appeal, counsel requests an additional 90 days in which to submit further evidence. We note that this extension can only be granted if the petitioner shows good cause. The petitioner has failed to demonstrate the good cause necessary to be entitled to such an extension. Further, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In the request for further evidence, as well as the notice of intent to deny, the director noted the deficiencies in the record and specifically listed the evidence to be submitted to support the petitioner's claims. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Counsel's assertion that further evidence will be submitted on appeal is, therefore, immaterial. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.* Regardless, although counsel submitted a document entitled "Appeal Brief," no additional evidence was received on appeal. We, therefore, consider the record to be complete as it now stands.

In support of the appeal, counsel for the petitioner states that the petitioner's "bona-fide spousal relationship," has been documented both by the consular officer when the petitioner entered the United States as a K-1 nonimmigrant and by the affidavits and letter from the IRS.

We first note that there is a significant difference between nonimmigrant K-1 visa classification, which allows an alien to enter the United States temporarily, and an immigrant I-360 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. Cf. §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because the eligibility requirements for each petition are different, the fact that the petitioner may have had a prior nonimmigrant visa petition approved, does not relieve her from meeting the evidentiary and eligibility requirements of the instant petition.

We further note that the unsupported 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).

As it relates to the lack of documentation regarding the petitioner's good faith marriage, counsel states that the petitioner lacks specific evidence because "everything was under her husband's control," and when "her husband abandoned her, she was left alone without any documents."

Upon review of the evidence contained in the record, we find the evidence is insufficient to establish that the petitioner entered her marriage in good faith.

As the affidavits do not provide specific details about the petitioner's marriage or courtship other than to describe the alleged abuse, we do not find the affidavits support a finding that the petitioner entered into the marriage in good faith.

Although the evidence related to the joint filing of taxes in 2001 is more persuasive than the affidavits and marriage certificate, this single piece of evidence is insufficient to establish a good faith marriage and to overcome the lack of any other documentary evidence. Specifically, the record remains absent evidence of insurance policies in which she or her spouse is named as the beneficiary, or bank statements or other documents that show she shared accounts and other responsibilities with her spouse. The petitioner failed to submit evidence of joint ownership or rental of property. No children were born of the marriage. Despite the petitioner's claim that she resided with her spouse for approximately one year, there is no evidence to establish the commingling of assets and joint financial liabilities, or other objective evidence to indicate that the petitioner and her husband intended to establish a life together in good faith.

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.