



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B9



FILE: [Redacted]
EAC 04 078 50540

Office: VERMONT SERVICE CENTER

Date: NOV 03 2005

IN RE: Petitioner: [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.

Man Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director denied the preference visa petition, and 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 Morocco 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.

On February 15, 2005, the director denied the petition, finding that the petitioner failed to establish that she had resided with the U.S. citizen spouse, and entered into the marriage in good faith.

On appeal, counsel for the petitioner submits a brief and additional evidence.

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.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] twenty-one years her senior, on May 6, 2002, in Morocco. On January 20, 2004, the petitioner filed a 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 first issue to be addressed in this proceeding is whether the petitioner established that she has resided with her United States citizen spouse. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(D) requires the petitioner to establish that she has resided with her U.S. citizen spouse.

Because the petitioner furnished insufficient evidence to establish that she had resided with her U.S. citizen spouse, the director asked her to submit additional evidence on September 10, 2004. The director listed evidence the petitioner could submit to establish that she had resided with her spouse, such as:

- Joint leases, mortgages or rental agreements.
- Insurance policies listing a common address for the petitioner and her spouse.
- Utility bills listing a common address for the petitioner and her spouse.
- Bank statements, tax records and financial documents listing a common address for the petitioner and her spouse.
- Affidavits of friends and family who can verify that the petitioner resided with her spouse.

In response to the director's request for additional evidence, the petitioner submitted a copy of an order for protection, which indicates that the petitioner's husband could be served at the Fulton County jail in Georgia; a translated letter from the petitioner's parents that is silent about where the petitioner and her husband resided; an affidavit from the petitioner's cousin, [REDACTED] which states that the petitioner and her husband lived together for one month before the petitioner fled the marital home for Morocco and that she returned to her marital home until the abuse resumed, whereupon she left again. The petitioner also submitted a letter from the U.S. citizen spouse that states that he could not afford to take care of the petitioner "outside the home" and that his father charged him only \$250 a month for rent.

The director, in his decision, found that the petitioner failed to submit sufficient evidence establishing that the petitioner resided with her spouse.

On appeal, counsel for the petitioner submits additional evidence including e-mails from the petitioner's "ex-spouse" indicating his desire to find an apartment for them to live in. Counsel asserts that a protective order in the record makes reference to [REDACTED] which clearly demonstrates that the petitioner and the abusive spouse shared a common residence." The order for protection does not establish that the petitioner and her spouse resided together. The order is a fill-in-the-blank form that contains the following: "Respondent is ordered to stay away from *Petitioner's* and *Petitioner's* minor child/ren's *residence* at _____ and at any subsequent residence or workplace or school of *Petitioner* and/or *Petitioner's* minor child/ren." (Emphasis added). Handwritten on the blank line was the [REDACTED]

Georgia address. The order is not evidence that the petitioner and her husband shared a residence. Similarly, the petitioner's husband's e-mail expressing a desire to find an apartment together is not evidence that the petitioner resided with her spouse. The evidence is insufficient to establish that the petitioner resided with her spouse.

The next issue to be addressed in this proceeding is whether the petitioner established that she 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, such as:

- Insurance policies in which the petitioner or her spouse is named as the beneficiary.
- Bank statements, tax records and other documents showing she shared financial responsibilities with her husband.
- Evidence of her courtship, wedding ceremony, residences, special events, etc.
- Evidence of joint ownership of property (such as a home, car, etc.)
- Birth certificates of children born to the petitioner and her husband.
- Affidavits of friends and family who can provide specific information verifying her relationship with her spouse.

In response to the director's request for additional evidence, the petitioner submitted a translated statement from her parents, who state that the petitioner's father met the petitioner's spouse at the airport when the latter asked the petitioner's father for tourist information. The parents' statement describes very limited interaction between the petitioner, her family and her prospective spouse prior to the marriage. The statement is silent as to a wedding ceremony or celebration. The petitioner also submitted an affidavit from her cousin, who stated that the petitioner and her prospective spouse met in Morocco and when the latter returned to the United States, he called the petitioner every day for seven months. The cousin fails to state the basis of his knowledge. He failed to mention a wedding ceremony or celebration. The statement and affidavit provide little specific information about the petitioner's relationship with her spouse. The petitioner failed to submit any evidence in the form of financial documents or insurance policies. No children were born of the marriage.

On appeal, counsel for the petitioner asserts that the evidence submitted in response to the request for additional evidence, including the petitioner's passport, indicates that she entered the U.S. on April 15, 2003 and again on June 19, 2003 in "a good faith effort to salvage her marriage by giving her ex-spouse¹ a second chance to redeem himself." While the passport does show her entry on June 19, 2003, it does not establish that she entered into the marriage in good faith. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

¹ It is unclear whether the reference to the petitioner's husband as an "ex-spouse" is an error or if the marriage was terminated.

Counsel for the petitioner requested an opportunity for oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. In fact, counsel set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

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.