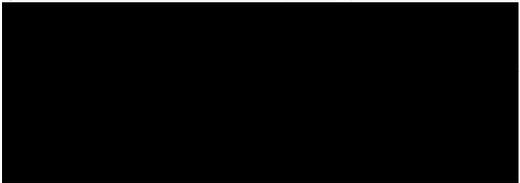




U.S. Citizenship
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FILE: [Redacted]
EAC 04 258 52938

Office: VERMONT SERVICE CENTER

Date: NOV 07 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:
[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 native and citizen of the Philippines 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 petitioner wed United States citizen [REDACTED] on January 29, 2000 in the Philippines. On November 28, 2003, the petitioner filed a Form I-360 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 United States citizen spouse. Prior to the adjudication of that Form I-360, the petitioner filed a second petition, the instant Form I-360 petition, on August 20, 2004. The director denied both petitions on March 3, 2005.

The petitioner, through counsel, files a timely appeal of the decision on the petition filed in August 2004.

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 spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] 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;

* * *

(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)(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 record contains a request for evidence issued by the director on August 19, 2004. The request, however, pertains to the first petition filed by the petitioner, not the instant petition, which was filed one day after the request for evidence was issued.¹ Although counsel does not raise this as an issue on appeal, we do not find the fact that the director failed to issue a request for evidence for the instant petition prior to denial resulted in any tangible harm to the petitioner. The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation.

¹ The receipt number for the petitioner's first Form I-360 is EAC 04 046 51948. This is the same receipt number that is listed on the director's request for evidence.

Even if we determined that the director had committed a procedural error by failing to solicit further evidence prior to his denial, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has, in fact, supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.²

As it pertains to the petitioner's eligibility, the record at the time of the director's decision contained the petitioner's sworn statement, her birth certificate and her marriage certificate, as well as a police clearance from Lake County, Florida, photographs of the petitioner and her spouse, and letters and envelopes from the petitioner's spouse.

After reviewing the evidence, the director denied the petition based upon a finding that the petitioner failed to establish that she entered into her marriage in good faith, that she resided with her husband, and that she was battered and/or subjected to extreme cruelty by her spouse.

The claims made by counsel on appeal do not overcome the director's findings. First, although counsel states that the petitioner "fell in love" with her spouse, counsel implies the petitioner did not actually reside with her spouse as once she came to the United States, "she found out that her husband was serving sentence in prison" Further, the "abuse" counsel claims the petitioner was subjected to was the "shock of not having anything of what [her spouse] promised" and the fact that "her husband is a child molester."

To support counsel's claims, counsel submits a copy of the program from the petitioner's wedding ceremony, three copies of wedding photographs, and three letters from friends and a relative. Counsel also resubmits a copy of the petitioner's marriage certificate. The petitioner did not submit any documentary evidence to show that they shared accounts or other responsibilities with each other, such as ownership of cars or other property, leases, or insurance. More importantly, the record contains no evidence to establish that the petitioner resided with her spouse. The supporting letters contained in the record indicate that the petitioner spent approximately 2 weeks with her spouse in the Philippines prior to their marriage but that once she came to the United States, her spouse was already in jail. The lack of documentary evidence demonstrating a commingling of assets and liabilities is further evidence that the petitioner did not reside with her spouse. Although the marriage certificate submitted by the petitioner is evidence of a legal marriage, the fact that a legal marriage took place does not establish that the marriage was entered into in good faith or that the petitioner resided with her spouse after the marriage ceremony. Similarly, 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.

The letters submitted in support of the petition provide only general details about the petitioner's relationship with her spouse prior to their marriage and do not describe any details or facts that would support a claim of abuse. Although the petitioner's father indicates that her spouse "broke his promises . . . we didn't know in the beginning that [he] is spending more than a year in jail . . . he deceived my daughter . . .," such claims

² In most instances, the AAO will not accept or consider additional evidence on appeal. However, that practice is instituted in instances unlike this one where the petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

are not sufficient to establish a claim of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which 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 fact that the petitioner may have felt betrayed by the fact that when she arrived in the United States her spouse was in jail is not evidence that the petitioner was a victim of battery or extreme cruelty.³ Such a claim does not demonstrate that, during her marriage, there was an overall pattern of violence, any act or threatened act of violence, or forceful detention, psychological or sexual abuse or exploitation.

Beyond the decision of the director, we must note several discrepancies that are contained in the record of proceeding which call the petitioner’s credibility into question. Specifically, the record contains evidence which indicates that the petitioner provided false information in order to obtain her K-1 nonimmigrant visa.

As noted previously, the record contains a copy of the petitioner’s marriage certificate which indicates that she was married in the Philippines on January 29, 2000. However, on the petitioner’s Nonimmigrant Fiancée Visa Application, Supplement to Form OF-156, which was submitted to the U.S. Embassy in Manila on January 22, 2001, nearly a year after the petitioner’s marriage, the petitioner indicated that she was “SINGLE” and provided the answer “NOT APPLICABLE” when responding to the following questions: “Name of spouse,” “Date and place of marriage,” “How and when was marriage terminated,” and “If presently married, how will you marry your U.S. citizen fiancé?” The petitioner swore that the statements provided were “true and complete” and certified that she was “legally free to marry and *intend[ed]* to marry [redacted] a United States citizen, within 90 days of [her] admission to the United States.”

The petitioner filled out a separate Form OF-156 on that date and again indicated that she was single and not married. Further, when responding to the question, “Does any other person provide you with significant economic support,” the petitioner responded [redacted] and identified Mr. [redacted] as her “*fiancé*,” not her husband.

The classification the self-petitioner entered the United States under, section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), was established by Congress in 1972. The classification was established for a

³ We note that the record may not support a finding that the petitioner was, in fact, deceived. Specifically, the letter *submitted by the petitioner* into the record from her spouse indicates that the petitioner was aware of the fact that her spouse was in jail before she came to the United States. In his letter, the petitioner’s spouse writes, “[Y]ou can play miss innocent. You knew what was going on and you agreed to go through with it just so you could get over here . . . you knew the whole story.” However, as we are dismissing the appeal, in part, because the petitioner’s claim that she was deceived is not sufficient to establish that she was battered or subjected to extreme cruelty by her spouse, we find no reason to discuss this issue any further or make any specific finding of fact regarding the petitioner’s knowledge of her spouse’s criminal record or prison term prior to her entry into the United States.

noncitizen fiancée or fiancé seeking to enter the United States *to marry a U.S. citizen after entry*.⁴ In 2000, Congress expanded the category to include noncitizens who married U.S. citizens abroad and are awaiting approval of an immigrant petition and an immigrant visa.⁵ The amendments made by the LIFE Act apply to beneficiaries of immigrant visa petitions filed before, on, or after December 21, 2000, the date of enactment.⁶

In this instance, the Form I-129F visa petition filed in the petitioner's behalf was filed in June 2000, after the petitioner's marriage had already taken place. Accordingly, she was not eligible for classification as a K-1 nonimmigrant. In addition, the petitioner was ineligible for classification as a K-3 nonimmigrant because she did not have a Form I-130, Petition for Alien Relative, approved prior to the filing of the Form I-129F petition. The regulation at 8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(k)(ii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F . . .

The evidence in the record indicates that because the petitioner concealed her marital status and provided false information on the forms supporting her visa application, she was able to secure a visa despite her statutory ineligibility. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits.⁷ However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

We acknowledge the fact that this is the first time the petitioner has been confronted with these allegations by the Service and that she has not been afforded the opportunity to resolve these discrepancies. However, our decision to dismiss the appeal is not based upon these discrepancies or a specific determination of fraud under section 212(a)(6)(C) of the Act.⁸ Rather, this issue has now been documented in the record, and as such, raises questions regarding the petitioner's credibility and past actions which the petitioner must answer in any subsequent proceeding before the Service or an immigration judge.

⁴ See P.L. No. 91-225, § 1(b), 84 Stat. 116. (April 7, 1970).

⁵ See section 101(a)(15)(K) of the Act, as amended by the Legal Immigration Family Equity Act (LIFE Act) (enacted as title XI of Act of Dec. 21, 2000, Pub. L. No. 106-553, § 1103, 114 Stat. 2762).

⁶ See LIFE Act § 1103(d).

⁷ See, e.g., *Spencer Enterprises Inc. v. U.S.*, 345 F.3d at 694.

⁸ Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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.