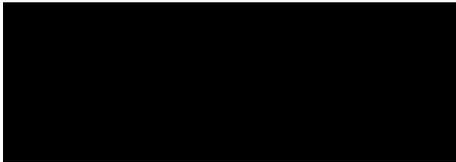


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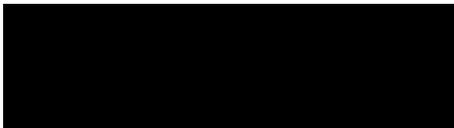
Office: VERMONT SERVICE CENTER

Date: **NOV 10 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 native and citizen of Colombia 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 in the record, the petitioner wed United States citizen [REDACTED] on May 19, 2001 in Ft. Lauderdale, Florida. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on August 3, 2001. The petitioner filed a Form I-485 application on that same date. The Form I-130 petition and the I-485 application were denied by the Miami District office on July 19, 2002 for abandonment. The petitioner filed the instant petition on July 24, 2002. The petition was denied on October 19, 2004.

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 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;
- (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.

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).

The regulation at 8 C.F.R. § 204.2(e)(1)(i) also requires the petitioner to show that she resided with her citizen spouse.

With the initial filing of her petition the petitioner submitted a personal statement and statements from two acquaintances. The director found this evidence was insufficient to establish that the petitioner entered into her marriage in good faith, that she has been battered by or subjected to extreme mental cruelty committed by her citizen spouse, that she resided with her citizen spouse, and that she is a person of good moral character. Accordingly, on November 3, 2003, the director requested further evidence.

As it relates to the petitioner's claim of abuse, the director requested the petitioner to submit evidence such as reports and affidavits from police, judges, court officials or medical personnel, evidence that the petitioner sought refuge in a shelter for the abused, and photographs of injuries. The director also requested that the petitioner submit a detailed statement regarding the alleged abuse, detailing her spouse's specific actions such as whether the abuse was verbal or physical, whether the petitioner was socially isolated, or whether her spouse was possessive. Finally, the director requested the petitioner to further explain allegations made in her statement and to provide specific details about her depression and her two claimed car accidents.

As it relates to the petitioner's claim that she is a person of good moral character, the director requested an affidavit supported by police clearances from each place the petitioner resided for at least six months during the three-year period prior to filing the petition. The director noted that if the petitioner received a police clearance based upon a name-check only, the petitioner must get a police clearance for all names used to include: [REDACTED] and [REDACTED].

As it relates to the petitioner's claim that she resided with her spouse, the director requested evidence such as joint leases, mortgages, or insurance policies, utility statements, bank statements, tax documents or other financial documents listing a common address.

Finally, as it relates to the petitioner's claim that she entered into the marriage in good faith, the director requested insurance policies listing the petitioner or her spouse as the beneficiary, bank statements, tax statements or other financial documents showing joint accounts, evidence of joint property, evidence of the petitioner's courtship, wedding ceremony, special events, or affidavits from friends and family who can provide specific details about the petitioner's relationship with her spouse.

On January 14, 2004, counsel for the petitioner submitted a letter in response to the director's request for evidence and requested an additional 45 days to respond to the director's request. The director granted the petitioner's request for additional time on April 5, 2004 and indicated that in accordance with the regulation at 8 C.F.R. § 204.1(h), the petitioner had 60 additional days to present additional evidence, to withdraw the petition, or to request a decision based upon the evidence submitted. The director noted that although the petitioner could be afforded additional time to respond, the total time shall not exceed 120 days. On June 9, 2004, counsel for the petitioner submitted a second request for additional time.

No further documentation was submitted after the petitioner's second request for additional time. Accordingly, the director denied the petition, finding that the petitioner failed to establish that she resided with her citizen spouse, that she entered the marriage in good faith, that she has been battered by or the subject of extreme cruelty perpetrated by her citizen spouse, and that she is a person of good moral character.

On appeal, counsel for the petitioner indicates that a brief and/or evidence would be submitted to the AAO within 30 days. To date, more than eleven months after the filing of the appeal, the record contains no further submission from the petitioner. We, therefore, consider the record to be complete as it now stands.¹

Based upon a review the record before the director at the time of her decision, we concur with the director's findings. The evidence in the record consists of three unsworn statements. In her statement, the petitioner claims that her spouse is a homosexual that cheated on her and because of that she was deeply depressed, argued with her daughter and got into two car accidents. The statements submitted by the petitioner's friends indicate that the petitioner told them that her spouse is a homosexual, that discovering such a fact about her spouse was "traumatic and devastating," and was the single cause "of all the problem[s] [i]n their relationship." The statements do not describe any incident of physical abuse or acts or patterns of extreme cruelty. The fact that the petitioner's spouse is a homosexual or that he cheated on the petitioner does not establish that the petitioner was subjected to extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

As the petitioner's Form I-360 indicates she resided with her spouse for approximately one year, we would expect ample documentation to show a joint residence and shared financial responsibilities documenting a good faith marriage. However, the record contains no leases, mortgage statements, financial records or other documentation to establish a shared residence, or bank statements, utility bills, insurance information or tax documentation to show the petitioner and her spouse had joint assets or financial responsibilities. The statements submitted in support of the petition provide no details such as where the petitioner and her spouse lived or how long they lived together or any detailed information regarding the petitioner's relationship with her spouse. The lack of evidence, combined with the lack of detail in the petitioner's supporting statements, do not lead to a finding that the petitioner resided with her spouse or that she entered the marriage in good faith.

Finally, the petitioner provides no statement regarding her good moral character or supporting police clearances.

Accordingly, we concur with the director's findings that the petitioner failed to establish that she entered into the marriage in good faith, that she resided with her citizen spouse, that she has been battered by or the subject of extreme cruelty perpetrated by her citizen spouse, and that she is a person of good moral character.

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.

¹ We note that in instances where 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. 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. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Therefore, even if the petitioner had submitted additional evidence on appeal, the AAO need not and would not consider the sufficiency of the evidence submitted on appeal.