

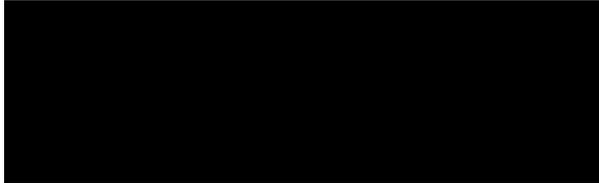
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U.S. Citizenship
and Immigration
Services

PL/1/1/007

B9



FILE: [REDACTED]
EAC 03 179 51823

Office: VERMONT SERVICE CENTER

Date: NOV 25 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.

Mari Johnson

§ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 Mexico who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that his or her marriage to the United States citizen was entered into in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by his or her spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

In this case, the petitioner filed her Form I-360 on May 27, 2003 and submitted supporting documents including her marriage certificate to [REDACTED] birth certificate, a letter from a certified domestic violence counselor, a letter from her daughter, and 11 letters from the petitioner's friends and acquaintances. Finding the submitted evidence insufficient, the director issued a Request for Evidence (RFE) on June 2, 2004 asking the petitioner to submit proof of the legal termination of [REDACTED] prior marriage¹, evidence of her joint residence with [REDACTED] additional evidence of her marriage to [REDACTED] in good faith, proof of her good moral character in the form of a police clearance, her own statement specifically describing the abuse, the birth certificate of her daughter, and any paperwork relating to any immigration petition or application filed by [REDACTED] on her behalf. Because the petitioner had not responded to the RFE or requested additional time to respond within 60 days, the director denied the petition on January 25, 2005 based on the evidence previously submitted and pursuant to the regulation at § C.F.R. § 204.1(h).

On the appeal Form I-290B, filed February 24, 2005, counsel claims he timely responded to the RFE but submits no supporting documents. Counsel checked the block on the Form I-290B indicating that he would provide "proof of the said mailing and of the contents of the said mailing within 30 days." Counsel further writes on the Form I-290B, "[t]his appeal also relates to the companion case involving the daughter of the petitioner Her case depends upon the success of the lead case." The petitioner's daughter filed a separate Form I-360 petition, also denied by the Vermont Service Center. Counsel did not file a separate appeal in the

¹ The director appears to have asked for proof of the legal termination of [REDACTED] prior marriage because on the petitioner's Form I-360 she indicated that he had been married two times. However, on the Form I-130 in the record, filed by [REDACTED] on the petitioner's behalf, he states that he has not been married before. The petitioner did not respond to this portion of the RFE and the record does not resolve this discrepancy. We note that an abuser's bigamy in itself will not render an alien ineligible if the alien demonstrates that he or she believed she had married the abuser with whom a marriage ceremony was performed and otherwise establishes her bona fide marriage to the abuser. Section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act. See also Memorandum from Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations, *Eligibility to Self-Petition as an Intended Spouse of an Abusive U.S. Citizen or Lawful Permanent Resident* (August 21, 2002) ("Proof of the abuser's prior divorces shall no longer be required since a finding that the marriage is not legally valid due to the abuser's bigamy cannot render the self-petitioner ineligible.").

case of the daughter. It is unclear whether counsel believes that the daughter's case must be considered on appeal simply because he references her A-file in the petitioner's appellate filing; however, it must be emphasized that each petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of an alien's statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in that alien's individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). There is no provision by which CIS may consider supporting evidence filed in connection with the mother's petition to cover the daughter's proceeding or vice versa.

On March 19, 2005, counsel requested until April 11, 2005 to submit a brief. On April 14, 2005, the AAO received the additional evidence, including a copy of a U.S. Postal Service Express Mail address label from counsel's office to the Vermont Service Center, which is dated July 29, 2004. On his cover letter accompanying the additional evidence, counsel again lists the names and A-file numbers for both the petitioner and her daughter; however, the decision on the daughter's petition is not on appeal before the AAO.

The petitioner's last name, which she shares with her daughter, is handwritten on the top of the copy of the express mail label. Counsel also submitted a printout from the U.S. Postal Service website showing that a package corresponding to this mailing label was delivered on July 30, 2004 to Saint Albans, [REDACTED] signed for by [REDACTED]. Counsel does not state that the documents submitted on appeal are the same as those submitted in this alleged RFE response, but contends that because the alleged response was timely filed, the case should be remanded to the director for reconsideration of the petition and "all of the evidence submitted in support thereof."

While the documents submitted on appeal show that counsel filed correspondence with CIS on July 30, 2004, the evidence does not establish that counsel responded to the petitioner's RFE. The Vermont Service Center issued an RFE for both the petitioner's and her daughter's pending I-360 petitions on the same day: June 2, 2004. CIS electronic records reveal that counsel responded to the daughter's RFE on July 30, 2004, but not to the petitioner's RFE. Although CIS reiterates that it is limited to a review of an individual record of proceeding when adjudicating a petition or appeal, in order to determine whether a response to the petitioner's RFE was inadvertently misfiled into the daughter's record of proceeding, the AAO obtained and reviewed the daughter's A-file, [REDACTED]. A review of that record reveals that counsel timely responded to the daughter's RFE on July 30, 2004. A copy of the daughter's RFE is attached to counsel's response, clearly indicating that the response relates solely to the daughter's Form I-360 petition. There is nothing in the record of proceeding for the petitioner or her daughter that shows counsel responded to the petitioner's RFE.

Even if counsel had established that the documents he now submits on appeal had been timely filed with CIS, those materials do not warrant a remand of the case to the director. The documents submitted on appeal do not fully respond to the director's Request for Evidence and fail to establish the petitioner's statutory eligibility. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO, without remand, even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

On appeal, counsel submits a second letter from the petitioner's daughter, copies of two letters previously submitted and seven additional letters from personal acquaintances of the petitioner attesting to [REDACTED] abuse. As will be further discussed, this evidence does not fully respond to the RFE and neither the petitioner

nor counsel explains this failure to provide the requested documentation. The record indicates that the petitioner was placed in removal proceedings on March 1, 2003, but neither counsel nor the petitioner have explained and documented how these proceedings or any other extenuating circumstances have prevented the petitioner from providing the requested evidence or why certain evidence does not exist or is unobtainable.

As discussed below, the record does not establish that the petitioner meets four of the statutory requirements for immigrant classification under Section 204(a)(1)(A)(iii) of the Act: 1) that the petitioner was subjected to battery or extreme cruelty by [REDACTED] during their marriage, 2) that she is a person of good moral character, 3) that she married [REDACTED] in good faith and 4) resided with him.

Subjection to Battery or Extreme Cruelty by the Petitioner's Spouse During the Marriage

Section 204(a)(1)(A)(iii)(I)(bb) of the Act requires the petitioner to show that "during the marriage . . . the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse." 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb). The corresponding 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, including rape, molestation, incest (if the victim is a minor), or forced prostitution 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 . . ., must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The applicable evidentiary standards are described in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *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 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.

In this case, the petitioner did not submit reports and affidavits from police, judges and other court officials, medical personnel, school officials, or clergy. The record contains no evidence that the petitioner sought refuge in a domestic violence shelter or took legal steps to end [REDACTED]'s abuse. The petitioner has not submitted her own affidavit explaining why such evidence does not exist or is unavailable. Instead, the petitioner initially submitted a letter from her daughter and six letters from friends and acquaintances that discuss the abuse. Five of these latter letters simply state that the authors know the petitioner and [REDACTED] were aware of their marital problems and knew of [REDACTED] abuse of the petitioner. Four of the letters' authors do not state how they acquired this knowledge. Only [REDACTED] states that he witnessed the abuse and saw "bruises on [the petitioner's] shoulders and on her left eye" because she and [REDACTED] lived with [REDACTED] and his wife in their home. The petitioner's daughter states that [REDACTED] would kick the petitioner's legs leaving bruises on her calves and she describes two specific incidents she witnessed where [REDACTED] struck the petitioner causing her lip to bleed and hit her with a belt leaving a large bruise on her lower back. The petitioner's daughter also explains that the petitioner confided to her that [REDACTED] often forced [the petitioner] to have sex when he was drunk or was using drugs."

In another letter submitted with the petition, [REDACTED], a Certified Domestic Violence Counselor, states that he first met the petitioner in November 2001 and later saw her on a weekly basis for an unspecified period of time. [REDACTED] letter contains specific and detailed descriptions of several incidents of [REDACTED] physical, emotional and mental abuse of the petitioner as related to him by the petitioner. In addition, [REDACTED] describes the petitioner's demeanor and behavior as witnessed by him during their meetings and how such behavior is symptomatic of someone who has suffered domestic violence. For example, [REDACTED] states that during their initial meeting, the petitioner was constantly looking out the window, cut the conversation short and left in fear that her husband would follow her and become enraged at her confiding in someone about his abusive behavior. [REDACTED] also states that on one occasion when the petitioner told him that [REDACTED] had beaten her a week earlier, he observed a bruise on the petitioner's left eye and a partially healed cut on her lip. Yet [REDACTED] states that when the petitioner asked him for help, he told her he "could guide her but could not counsel her because [he] only counsel[s] men in Domestic Violence." [REDACTED] explains that he then "met with her on a weekly basis as a friend not as a counselor because she did not have the money to get counseling on her own."

While the letters of [REDACTED] and the petitioner's daughter contain detailed and credible descriptions of Mr. [REDACTED] abuse of the petitioner, their letters are not sufficiently corroborated by any other documents in the record. On appeal, the petitioner submits seven additional letters from friends who attest to [REDACTED] abuse of the petitioner. These one-paragraph letters contain only general statements that the authors witnessed or were aware of the abuse. They do not describe specific incidents of abuse in any detail. Moreover, the petitioner did not respond to the director's request on page two of the RFE to "submit a statement, in your own words, which describes and outlines the abuse. Please be as specific as possible." (emphasis in original). Failure to respond to a request for additional evidence will result in a decision based on the evidence previously submitted. 8 C.F.R. § 204.1(h).

In her first letter submitted with the petition, the petitioner's daughter states that she and the petitioner have been seeing a family therapist for a year and a half, but the record contains no letter from this therapist. In addition, the record contains no photographs of the petitioner's injuries or destruction of the petitioner's property by Mr.

no evidence that the petitioner sought help from the police, took legal steps to end the abuse, sought refuge from her husband, sought medical treatment for injuries inflicted upon her by [REDACTED] or any explanation by the petitioner herself as to why such evidence does not exist or is unavailable. [REDACTED] states that the petitioner told him [REDACTED] threatened to have her deported if she ever called the police and she feared he would do so. [REDACTED] also explains that the petitioner “was not educated in the laws of abuse and had no Idea [sic] how to get out of her abusive lifestyle without being deported.” Yet the petitioner does not, through her own statement or affidavit, corroborate [REDACTED] threats, explain why his threats were credible and describe her resultant fear, or explain any other reasons why she did not take legal steps to stop Mr. [REDACTED] abuse or seek medical treatment for her resultant injuries. The petitioner’s failure to provide her own statement specifically describing the abuse and its effects on her and the lack of other corroborative evidence of the alleged abuse prevent us from finding that the petitioner was battered or subjected to extreme cruelty by Mr. [REDACTED] during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

Section 204(a)(1)(A)(iii)(II)(bb) of the Act requires the petitioner to demonstrate that he or she is “a person of good moral character.” The regulation at 8 C.F.R. § 204.2(2)(c)(v) states, in pertinent part:

Primary evidence of the self-petitioner’s good moral character is the self-petitioner’s affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner’s good moral character.

On page two of the RFE, the director specifically asked the petitioner to submit evidence of her good moral character in the form of a local police clearance and clearly stated the evidentiary standard and types of acceptable documentation as specified in the regulation at 8 C.F.R. § 204.2(2)(c)(v). The director also stated, “if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used, including maiden and/or married name(s), if applicable.” (emphasis in original). On appeal, the petitioner fails to submit a police clearance or her own statement. Failure to respond to a request for additional evidence will result in a decision based on the evidence previously submitted. 8 C.F.R. § 204.1(h).

The record indicates that the petitioner has lived in Thornton, Colorado since 1997 and contains a clearance letter from the Thornton Police Department for the petitioner, which was apparently submitted with her daughter’s Form I-360 self-petition. This letter does not state how the police records were researched, e.g., by name only or by name and birth date. In addition, the letter is undated and consequently does not show that the petitioner had no police records during the three-year period immediately preceding the filing of the petition.

Some of the submitted letters describe the petitioner as an upstanding individual. [REDACTED] states that the petitioner “is a very respons-Able [sic] has achieved many goals that has set forth [sic]. She is a good Example

[sic] to all those around her.” [REDACTED] states that she would be happy to employ the petitioner in her beauty salon when the petitioner gets her cosmetology license because after interviewing the petitioner, speaking with her instructor and reviewing her file, [REDACTED] was very impressed with [her.] [S]he shows much enthusiasm [sic] and responsibility.” [REDACTED] Director of the United Beauty College, affirms that the petitioner is a cosmetology student enrolled at the College and that “she is a good student. She always pays her tuition on time.” [REDACTED] states that the petitioner is “a very independent and hard working person who does not want to live off charity. She has proven she is capable of surviving on her own and making a better life for her and her daughter.” [REDACTED] Secretary of Our Lady of Guadalupe Church in Denver, affirms that the petitioner has been a registered member of this church since 2001. These letters reflect well upon the petitioner, but they are insufficient to meet the statutory requirement of good moral character.

Primary evidence of a self-petitioner’s good moral character is her own affidavit, which should be accompanied by a local police clearance or state-issued criminal background check. 8 C.F.R. § 204.2(2)(c)(v). Other evidence of good moral character is only acceptable when the petitioner demonstrates that police clearances or state background checks are unavailable. *Id.* Despite the specific request made in the RFE, the petitioner failed to submit her own affidavit, a sufficient local police clearance, a state-issued criminal background check or an explanation of why such a clearance or check was unavailable. Failure to respond to a request for additional evidence will result in a decision based on the evidence previously submitted. 8 C.F.R. § 204.1(h).

Even if the petitioner had explained that a police clearance or background check was unavailable, the submitted letters referenced above would not suffice to demonstrate her good moral character. With the exception of [REDACTED] none of the authors state how they are “responsible persons who can knowledgeably attest to the self-petitioner’s good moral character.” *Id.* For example, they do not all state their employment or position within the petitioner’s community, explain how long they have known the petitioner and provide specific examples of her character as manifested in her behavior or statements. The evidence submitted thus does not establish that the petitioner is a person of good moral character pursuant to section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Good Faith Marriage

Section 204(a)(1)(A)(iii) of the Act requires the self-petitioner to demonstrate that her marriage to the abusive United States citizen “was entered into in good faith.” The regulation at 8 C.F.R. § 204.2(2)(c)(vii) states, in pertinent part:

Evidence of good faith at the time of the marriage may include, but is not limited to, proof that one spouse has been listed as the other’s spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include . . . police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

On page two of the RFE, the director stated, “Regarding good faith marriage, please submit additional evidence to establish good faith marriage. Please submit legible copies of joint income tax returns, bank statements, apartment leases, mortgages, credit card statements, life insurance policies, medical insurance cards or policies, bills, etc.” (emphasis in original). The record contains no evidence of any such documents or any explanation

² This individual’s letter contains her complete name only in her signature, which is not fully legible.

of why such documents do not exist or are unavailable. Failure to respond to a request for additional evidence will result in a decision based on the evidence previously submitted. 8 C.F.R. § 204.1(h).

Letters from seven friends of the petitioner state that the authors know her and her husband and would visit or go out with them as a married couple. Yet none of these letters provide specific information about the petitioner's marriage to [REDACTED] or descriptions of their courtship, wedding ceremony, shared residence and experiences. [REDACTED] states that the petitioner and [REDACTED] "first lived at [REDACTED], but [REDACTED] does not state that she ever visited the couple at that address or otherwise witnessed their joint residence and interactions as husband and wife. The petitioner herself has not provided a statement describing how she met [REDACTED] their courtship, wedding, joint residence and any other shared experiences. The record thus does not establish that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii) of the Act.

Residence with the Abuser

Section 204(a)(1)(A)(iii)(II)(dd) of the Act requires that a self-petitioner show that she "has resided with the alien's spouse." The regulation at 8 C.F.R. § 204.2(c)(2)(iii) states, in pertinent part, "Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted." In this case, the RFE asked the petitioner to "provide evidence that you have resided with your spouse" and listed five specific types of acceptable evidence, including "[a]ffidavits of friends and family who can verify that you resided with your spouse."

The petitioner submitted none of the types of records specified in the regulation and the RFE. Only two of the submitted letters affirm one joint residence of the petitioner and [REDACTED] states that the petitioner and [REDACTED] first lived at [REDACTED] but she does not state how long they lived at that address or that she ever visited them there. [REDACTED] affirms that the petitioner and [REDACTED] lived with him and his wife in June 2002 and the record includes a Form I-864 Affidavit of Support filed by [REDACTED] (for the petitioner and submitted with her Form I-485), which lists his address as [REDACTED] his address is also listed as the couple's joint residence on the Form I-130 petition filed by [REDACTED] on the petitioner's behalf on April 3, 2002.

However, in her letter dated April 28, 2003, the petitioner's daughter states, [REDACTED] and [REDACTED] have been married for seven years, and within those years I have gone to six different schools, because [REDACTED] did not have a stable job, and we were always living with different people." While this statement indicates that the petitioner may have been unable to obtain the types of records regarding her marital residence that were requested in the RFE, the petitioner submitted no statement or affidavit explaining her failure to provide this evidence. Without such an explanation and other credible evidence of joint residency, the letters of [REDACTED] and [REDACTED] are insufficient to establish that the petitioner resided with her spouse.

In review, the record contains insufficient evidence to establish that the petitioner was battered or subjected to extreme cruelty by her U.S. citizen spouse during their marriage, that she is a person of good moral character, and that she entered into her marriage with [REDACTED] in good faith and resided with him. The petitioner was notified of the deficiencies in her self-petition and of the specific forms of acceptable and required evidence by the director's RFE. The petitioner failed to fully respond to the RFE and did not show that certain requested

evidence does not exist or is unobtainable. Failure to respond to a request for additional evidence will result in a decision based on the evidence previously submitted. 8 C.F.R. § 204.1(h). As supplemented on appeal, the record does not establish the petitioner's eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her self-petition must therefore be denied.

The burden of proof in visa petition 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. This decision is rendered without prejudice to the filing of a new petition under section 204(a)(1)(A)(iii) or (v) of the Act with the requisite supporting documentation, fee or a documented request for a fee waiver.

ORDER: The appeal is dismissed.