

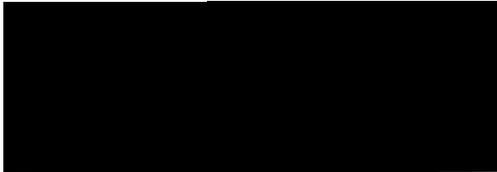
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U.S. Citizenship
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FILE: [REDACTED]
EAC 05 027 53246

Office: VERMONT SERVICE CENTER

Date: AUG 10 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of South Korea 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse.

The director denied the petition, finding that the petitioner had failed to establish that she had been battered by, or subjected to extreme cruelty perpetrated by, her spouse and that she is a person of good moral character.

The petitioner filed a timely appeal. On appeal, she submitted additional evidence.

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 he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's 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).

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 evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together 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.

(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 abuse 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.

(v) *Good moral character.* 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 self-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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of 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 the birth certificates of children born to

the abuser and the spouse; 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.

The petitioner last entered the United States on May 10, 2003 as a nonimmigrant B-2 visitor. She married [REDACTED] 20 years her senior, on August 25, 2003 in North Carolina. [REDACTED] became a naturalized citizen of the United States in 1997. [REDACTED] filed a Form I-130 petition for alien relative on the petitioner's behalf on September 15, 2003. It was approved on October 28, 2003. The petitioner filed a Form I-485 application to adjust status concurrently with the Form I-130 petition and remains pending.

On November 4, 2004, the petitioner filed her Form I-360. On April 25, 2005, the director issued a notice informing the petitioner that the evidence submitted with her Form I-360 was insufficient to establish her eligibility and requested evidence of her good moral character and evidence that the petitioner had been subjected to battery or extreme cruelty by her spouse. The petitioner responded to the director's request on June 20, 2005 and provided Citizenship and Immigration Services (CIS) with a letter from [REDACTED] indicating that she was unable to obtain the petitioner's criminal records in South Korea without her presence. She also submitted statements from [REDACTED]

Battery or Extreme Cruelty

The first issue to be addressed in this proceeding is whether the petitioner established that her spouse subjected her to battery or extreme cruelty. The petitioner initially submitted her own affidavit to establish that she had been subjected to extreme cruelty by her spouse. She indicated in her affidavit that upon her arrival in the United States in May 2003, she discovered that her spouse was living in a "house [that] could hardly [be] called home." She said that the house was very dirty and that her husband's clothing was stained and threadbare. She indicated that she worked hard to repair his clothing and clean the house. She said that his children were unkind to her. She said that there were some arguments and that he said things like "you are not good at all." She said that in August 2004, her husband's children picked up her husband from the house, then cut off her telephone, electricity and phone service.

In response to the director's request for additional evidence, the petitioner submitted a letter from a friend who resides in the United States, [REDACTED] wrote that he became acquainted with the petitioner "because of her miserable situation." He said that her husband left home without any reason, and her telephone and power were cut off.

On appeal, the petitioner submitted a letter from [REDACTED] dated October 6, 2005, in which he states that when he visited the petitioner at [REDACTED] in Greensboro, he was aghast to see her poor living conditions. He noted that she had no electricity or phone service.

On appeal the petitioner submitted her own statement dated November 1, 2004. She went into greater detail describing the family argument that led to the couple's break-up. She said that her husband's children later broke into the house and took his clothing and threatened to kick her out of the house.

The letters and statements indicate that the petitioner's spouse left her and failed to provide any material support, but they do not amount to psychological abuse and the record does not indicate that her husband's conduct was part of an overall pattern of abuse against the petitioner.

The evidence on the record does not establish that [REDACTED] subjected the petitioner to battery or extreme cruelty pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi), 204.2(c)(2)(iv). The evidence does not indicate that [REDACTED] ever used or threatened to use force against the petitioner. His behavior was not part of an overall pattern of violence and did not amount to psychological abuse. In addition, the petitioner submitted no evidence that she ever sought assistance from the police, religious figures, psychologists, physicians, social workers or other social service agency personnel to help him deal with her spouse's alleged extreme cruelty. Although she is not required to submit such evidence, she submitted no statement to explain why she did not seek assistance, or that she did seek help, but that evidence of such help (or her attempts to get help) does not exist or is unobtainable. Accordingly, the present record does not demonstrate that the petitioner was subjected to battery by, or extreme cruelty by, her U.S. citizen spouse as required by section 204(a)(1)(A)(iii) of the Act.

Good Moral Character

The next issue to be addressed is whether the petitioner established that she is a person of good moral character. In her April 25, 2005 notice, the director asked the petitioner to submit evidence of her good moral character, specifically, her own affidavit supported by police clearances or records from each place she had resided for at least six months during the three-year period before her petition was filed. The director's request was made pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). In response, the petitioner submitted a letter from a friend indicating that she was unable to obtain the petitioner's criminal records in South Korea without the petitioner's presence.

On appeal, she submitted a clearance from the Korean National Police Agency. In cases 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 does not usually 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). In this instance, however, because the petitioner was not provided with the notice of intent to deny as required by regulation, we reviewed the petitioner's appellate submission in order to determine whether such evidence overcomes the director's stated grounds for denial and could be sustained without remanding to the director for further action. As discussed in the decision, the petitioner's appellate submission does not overcome the director's findings.

The applicant has resided in the United States since May 2003; hence, she is required to submit clearances from localities where she resided in the United States as well as Korea. On appeal, the petitioner failed to submit police clearances, state criminal background checks, or an explanation of why such records are unavailable or unobtainable in North Carolina. The petitioner did submit a letter from [REDACTED] who said that the petitioner is "a nice Christian with strong belief, very honest." She submitted a letter from [REDACTED] stating that the petitioner "is a good Christian . . . honest and diligent and good character." None of these documents comply with the director's request and the regulation at 8 C.F.R. § 204.2(c)(2)(v) and counsel offers no explanation of why the petitioner is unable to submit the requested police clearances or state criminal background checks. Consequently, the present record does not establish that the petitioner is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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).

Good Faith Marriage

Beyond the director's decision, the petitioner failed to establish that she entered into the marriage in good faith. It is noted that there is a 20-year age difference between the petitioner and her spouse. She provided CIS with scant information about her courtship and married life. She indicated that they met through a relative and began a long-distance relationship. She said that in May 2002, her prospective spouse visited her in Korea. She said that she initially refused to marry but she wanted to be steady so she agreed to marry. The petitioner came to the United States as a B-2 nonimmigrant visitor for pleasure and claims to have lived with her husband from May 2003 until August 2004, yet she provided no evidence showing that she and her husband shared financial responsibilities or assets. For this additional reason, the petition may not be approved.

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

The case must be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.