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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



B9

FILE:



Office: VERMONT SERVICE CENTER

Date:

DEC 15 2006

IN RE:

Petitioner:



PETITION: Petition for 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:



PUBLIC COPY

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.

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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 appeal will be dismissed.

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that her husband battered or subjected her to extreme cruelty, that she had resided with her husband, entered into their marriage in good faith and is a person of good moral character.

On appeal, counsel submits a brief and 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 or a child of 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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *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.

(vii) *Good Moral Character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petition will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. . . .

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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 . . . , 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 record in this case provides the following pertinent facts. The petitioner is a 29-year old native and citizen of South Korea who last entered the United States on June 13, 2002 as a B-2 nonimmigrant visitor. On April 3, 2002, the petitioner married D-H-¹, a U.S. citizen, more than 30 years her senior.²

¹ Name withheld to protect individual's identity.

On June 25, 2004, the petitioner and D-H- were divorced in Nevada. On June 30, 2005, federal agents from the United States Immigration and Customs Enforcement, the Federal Bureau of Investigation, Internal Revenue Service, and Diplomatic Security Service, executed criminal search warrants at 10 suspected brothels in the San Francisco Bay Area. The joint investigation targeted a human trafficking organization suspected of engaging in the smuggling and harboring of women for purposes of prostitution. As a result of the investigation, the petitioner was arrested at the Golden Flower Sauna and Spa and placed in removal proceedings. The petitioner is scheduled for an immigration court hearing on January 2, 2007.

The petitioner filed this Form I-360 on September 20, 2005. On March 30, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, finding that the petitioner had failed to establish the requisite battery or extreme cruelty, joint residence, good moral character, and good faith marriage. The petitioner failed to respond to the NOID. On August 7, 2006, the director denied the petition on the grounds cited in the NOID and counsel timely appealed.

On appeal, counsel asserts that the evidence establishes that the petitioner entered into the marriage in good faith, that she was subjected to mental cruelty by her spouse and that she is a person of good moral character. We concur with the director's determination that the petitioner failed to establish the battery or extreme cruelty, joint residence, good moral character and good faith marriage.

On appeal, counsel submits additional evidence, i.e., a psychological evaluation of the petitioner by Dr. [REDACTED] a licensed psychologist.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's affidavit;
- A copy of a car insurance policy declaration;
- Joint checking account statements dated August 2002 through November 2004;
- A copy of an unsigned 2003 Form 1040 federal tax return prepared for the petitioner and her spouse;
- A copy of a Bank of America Visa statement addressed to the petitioner's spouse alone dated December 9, 2003. Copies of Bank of America Visa statements addressed to the petitioner and her spouse dated January 2004 through November 2004.

² In this decision, we refer to the petitioner's husband, D-H-, as her first husband.

her spouse dated January 2004 through November 2004.

- The petitioner's first husband's statement that the petitioner moved in with him shortly after they wed.

On the Form I-360, the petitioner states that she lived with her husband from April 2002 to April 2004 and that their last joint residence was on [REDACTED] Street in Westchester, California. In her August 11, 2005 affidavit, the petitioner states that she lived with her husband from June 2002 until January 2003 at which time she got her own apartment. She further states that she subsequently lived with her spouse intermittently.

The relevant documentary evidence also fails to establish that the petitioner resided with her husband. The majority of the Bank of America Visa statements are dated either subsequent to the date of their separation or their divorce or both. The tax returns are unsigned and therefore have no probative value. Many of the bank statements are dated after the parties' separation and divorce. The car insurance policy declaration fails to list a vehicle description or liability limits and postdates the parties' divorce.

The petitioner submitted no other evidence of her residence with her husband of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii), such as a lease or mortgage. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The record fails to establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The same documents listed in the preceding section are also relevant to the petitioner's claim of marrying her husband in good faith. In her August 11, 2005 statement, the petitioner explains that she met her first husband at her place of work, where he was a manager and she was a licensed massage technician. The petitioner states that she began dating D-H- in December 2001; they became engaged in February 2002, and wed on April 3, 2002. The petitioner does not further describe their courtship, their wedding or any of their shared marital experiences, apart from her husband's alleged abuse.

The relevant statements of the petitioner's friends provide no probative information regarding the petitioner's purported good faith in marrying her husband.

The relevant documentary evidence also fails to support the petitioner's claim. Many of the credit card and bank account statements postdate the parties' separation. The joint tax returns are unsigned. The petitioner submitted copies of photographs. The photographs indicate that the petitioner and her first husband were together, but do not establish the petitioner's good faith entry into their marriage. The car policy declaration lacks a description of the insured vehicle and limits of liability, and postdates the

parties' divorce, calling into question its probative value.

The petitioner submitted no other documentary or testimonial evidence of her allegedly good faith entry into marriage with her first husband of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the director's NOID. Accordingly, the record does not demonstrate that the petitioner entered into marriage with her first husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The petitioner submitted the following evidence relevant to her claim of battery or extreme cruelty:

- The petitioner's August 11, 2005 affidavit;
- A psychosocial assessment report of the petitioner by Dr. [REDACTED], a licensed psychologist, dated August 11, 2005;
- The sworn statement of the petitioner's friend [REDACTED] dated September 9, 2005;
- The sworn statement of the petitioner's friend [REDACTED], dated September 9, 2005;
- A letter from the petitioner's first husband, dated August 16, 2005;

In her August 11, 2005 affidavit, the petitioner states that shortly after their marriage, her husband became jealous and that he used the threat of deportation to control their relationship. She further states that her husband refused to attend their second INS interview because he felt he could not control the relationship if he lost the leverage of his power over her immigration status. She states that he would become obsessed with what time she arrived home from work and kicked her out of their home in January 2003. The petitioner stated that "[a]lthough he never hit me, his jealousy [sic], abusiveness, and consistent threatening took a terrible toll on me." The petitioner failed to provide sufficient details about her husband's alleged abusiveness.

The remaining, relevant evidence fails to support the petitioner's claim. In his psychological evaluation of the petitioner, Dr. [REDACTED] states: "[The petitioner's husband] felt the need to prevent [the petitioner] from leaving him by intimidating her about the power he had to affect her permanent residency. He didn't want her to socialize with her friends at Korea town [and] became more controlling. . . . He was emotionally abusive frequently." Dr. [REDACTED] failed to describe how the petitioner's husband became more controlling and abusive. He said that the petitioner's spouse did not want the petitioner to socialize with her friends in Korea town, yet the petitioner failed to mention that her husband attempted to isolate her.

In their September 9, 2005 affidavits, [REDACTED] and [REDACTED] both stated that they personally witnessed the petitioner's husband threatening the petitioner with deportation if she did not come home earlier.

In a letter dated August 16, 2005, the petitioner's first husband confessed that he became "vindictive, spiteful and abusive" towards the petitioner. He said that he threatened to withdraw his support for her petition in order to get his way with her. He failed to explain what he meant by "his way."

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and the director's NOID. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The NOID specifically directed the petitioner to submit "evidence to show that [she was] the victim of battery or extreme cruelty." The director informed the petitioner that her statement and the statements of others must be specific and where possible, corroborated. The petitioner did not respond to the NOID. The petitioner does not indicate that her husband isolated her, as stated by Dr. Sabath. The petitioner's failure to discuss this aspect of her husband's behavior or to explain the discrepancies between her statement and that of Dr. Sabath detracts from the credibility of her claim. Accordingly, the petitioner has not demonstrated that her husband battered or subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

Finding the initial evidence insufficient to establish the petitioner's good moral character, on September 27, 2005, the director specifically requested that the petitioner submit police clearances or records from each place she had resided for at least six months during the 3-year period before filing the Form I-360 petition. The director wrote the following to the petitioner:

Submit evidence of your good moral character. The following may be submitted.

1. Your own affidavit supported by police clearances* or records from each place you resided for at least 6 months during the 3-year period before filing this petition. If you have resided outside the United States during this 3-year period, you must submit police clearances from those locations.
 2. If police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support your affidavit. Evidence may include affidavits from responsible persons who can knowledgeably attest to your good moral character.
- For your convenience a listing of agencies that can assist you in obtaining police clearances from each state in the United States has been enclosed with this notice. Please note: if the police clearance is researched by name only, you must supply the law

enforcement agency will all aliases you have used, including maiden and/or married names(s), if applicable.

If your police clearance letter or your own statement indicates that you have been arrested or charged with any crime, please submit the following:

1. copies of the arrest report(s);
2. copies of court documents showing the final disposition of the charge(s); and
3. relevant excerpts of law for that jurisdiction showing the maximum possible penalty for each charge.

In response to the RFE, the petitioner submitted a record from the Los Angeles County Superior Court that provides that the Santa Monica Police Department arrested the petitioner on June 4, 2005 and charged her with violating section 148 of the California Penal Code, Restrict Peace Officer. On November 16, 2005, the petitioner pled nolo contendere to the charge and received 24 months probation, one day in jail, and a fine. (Court docket number 5 WL 24263.) She also submitted a letter from Joseph Santoro whom she met in church and affidavits of coworkers [REDACTED] and [REDACTED], which state that the petitioner is a person of good moral character. According to the evidence in the record, the petitioner was taken into custody at a suspected brothel on June 30, 2005. The petitioner submitted her own statement dated October 6, 2005, but failed to address her criminal record in its entirety. According to the evidence in the record, the petitioner was arrested on May 11, 2000 on two unspecified charges. The petitioner failed to establish that she is a person of good moral character.

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. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.