

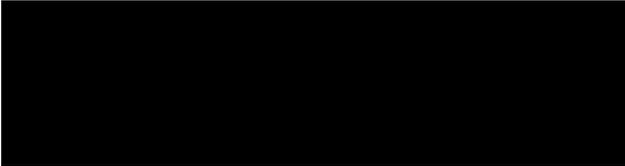
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 02 2006

EAC 02 175 50163

IN RE:

Petitioner:



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, Director
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 is a native and citizen of Russia 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. The director found the evidence initially submitted with the petition insufficient to demonstrate that the petitioner had entered into her marriage with her former U.S. citizen spouse in good faith and requested additional evidence to satisfy this statutory requirement. The petitioner timely responded with additional evidence, however, the director determined that these documents did not establish the petitioner's good faith marriage and consequently denied the petition. The petitioner timely appealed. On appeal, counsel submits a brief and an additional affidavit of the petitioner. Counsel's contentions and the petitioner's affidavit submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed for the reasons discussed below.

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 spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states:

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 regulation at 8 C.F.R. § 204.2(c)(2) further 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.

* * *

(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 evidence will be considered.

In this case, the record shows that the petitioner was admitted to the United States on October 13, 1999 as a K-1 nonimmigrant on the basis of an approved petition for alien fiancée filed by [REDACTED] a U.S. citizen. On October 19, 1999, the petitioner and Mr. [REDACTED] were married. Their marriage was adjudged dissolved on December 8, 2000. The record contains the following evidence relating to the petitioner's marriage to Mr. [REDACTED]: a copy of her marriage certificate and judgment of dissolution of marriage; a residential lease signed by the couple on February 18, 2000; a dental office form dated November 13, 1999 showing that the petitioner was covered under Mr. [REDACTED] dental insurance policy; Mr. [REDACTED] boarding pass dated January 25, 1999 for the airline *Aeroflot*; three school forms for the petitioner's children dated between October 18, 1999 and June 14, 2000 and signed by Mr. [REDACTED] as their parent, stepfather and mother's fiancé; a credit card issued to the petitioner in 1999 as [REDACTED] a disclosure and informed consent form signed by the petitioner and Mr. [REDACTED] on February 29, 2000 for the attorney representing the petitioner for her adjustment of status and employment authorization applications; affidavits and letters from the petitioner, her son and daughter, her sister, her sister's husband, and [REDACTED] and 12 photographs of the petitioner, Mr. [REDACTED] the petitioner's children and the petitioner's sister and her family.

These documents indicate that the petitioner and Mr. [REDACTED] were married and briefly resided together, but they do not establish that the petitioner entered into the marriage in good faith. According to the petitioner's affidavits, the petitioner was introduced to Mr. [REDACTED] in approximately September 1998 by her sister, [REDACTED] who was living in the United States and had met Mr. [REDACTED] through her husband. The petitioner explains that [REDACTED] acted as an interpreter because Mr. [REDACTED] did not speak Russian and the petitioner's English was very limited. Mr. [REDACTED] then called the petitioner about three times a week and they would speak to each other "with Irina's help." The petitioner states that the couple corresponded and in his letter dated August 12, 2000, [REDACTED] the husband of the petitioner's sister, also states that Mr. [REDACTED] wrote letters to the petitioner. However, the record contains no copies of such letters or any other written correspondence between the petitioner and Mr. [REDACTED]. The petitioner states that in January 1999, Mr. [REDACTED] and [REDACTED] went to Moscow to meet her and that they all stayed at a hotel. The petitioner explains that she traveled to Moscow to meet Mr. [REDACTED] and did not bring her children. On the second day of their visit, the petitioner states that Mr. [REDACTED] proposed to her at dinner and she accepted.

The petitioner explains that after their arrival in the United States in October 1999, she and her children did not live with Mr. [REDACTED] because he was living in a small townhouse that could not accommodate them all and that he told her that when his lease expired they would all live together. The residential lease shows that the couple began living together on February 18, 2000, four months after they were married. Only three of the 12 photographs submitted picture the petitioner and Mr. [REDACTED] together. The lease, dental office form, disclosure and informed consent form, and school forms indicate that the petitioner and Mr. [REDACTED] publicly presented themselves as a married couple between October 1999 and February 2000. These documents do not, however, establish the petitioner's own good faith in entering into the marriage. The affidavits of the petitioner, her sister, and Mr. [REDACTED] provide consistent descriptions of how the petitioner and Mr. [REDACTED] met and later married. Yet these statements are not corroborated by any documentary evidence in the record. Mr. [REDACTED] boarding pass only shows that he flew on a Russian airline flight on January 25, 1999. The record does not establish the length of his visit to meet the petitioner and the petitioner has submitted no evidence of their alleged correspondence after his visit and prior to her arrival in the United States. Moreover, in her affidavits, the petitioner does not

persuasively explain why she agreed to marry a man she had met only the day before and with whom she did not share a common language.

On appeal, counsel claims that Citizenship and Immigration Services (CIS) has placed the petitioner in “an impossible situation” because as an abused spouse, the petitioner was unable to obtain further documentary evidence of her good faith marriage. We understand, and the record shows, that the petitioner only briefly resided with her husband before he became abusive and the marriage was dissolved. While these circumstances undoubtedly limited the petitioner’s ability to obtain further documentary evidence of the couple’s married life, the petitioner herself has not explained or documented why further evidence does not exist or was unobtainable. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). More importantly, neither counsel nor the petitioner explains why the record is devoid of documentary evidence of the couple’s meeting, courtship, wedding ceremony (if any), shared experiences prior to the dissolution of their marriage, or any other evidence of the petitioner’s good faith in entering her marriage to Mr. [REDACTED]. Without such evidence, the submitted materials do not overcome the petitioner’s statements that she and Mr. [REDACTED] did not speak the same language fluently, could not communicate directly during their courtship and that she accepted his marriage proposal the day after she met him in person and before he had met her children.

On appeal, counsel also contends that because the director found the petitioner to be credible in regards to Mr. [REDACTED] abuse, the petitioner’s attestations regarding her entry into her marriage in good faith should also be found credible. The abusive behavior of Mr. [REDACTED] and the petitioner’s good faith entry into their marriage are two very different and distinct aspects of this case. Credibility concerning one aspect does not automatically transfer such credibility to the other. Moreover, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.” 8 C.F.R. § 204.2(c)(2)(i). We concur with the director’s determinations that the evidence submitted establishes that the petitioner was subjected to extreme cruelty by Mr. [REDACTED] during their marriage, but does not demonstrate that she entered into their marriage in good faith.

The evidence submitted fails to establish that the petitioner entered into her marriage with Mr. [REDACTED] in good faith as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(vii). The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must 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.

ORDER: The appeal is dismissed.