



U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 01 2006
EAC 04 163 53259

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:
[REDACTED]

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Venezuela who last entered the United States on November 5, 2001 at Miami as a B-2 nonimmigrant visitor. The petitioner now 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 initially denied the petition, finding that the petitioner had failed to respond to his request for additional evidence. Subsequently, the director determined that he had made an error and that the petitioner had submitted a timely response to his request for evidence. The director reopened the matter, considered all the evidence in the record including the petitioner's response to his request for additional evidence and again denied the petition, finding that the petitioner had failed to establish that she had resided with her spouse; had been battered by, or subjected to extreme cruelty perpetrated by, his spouse; and that she entered into the marriage in good faith.

The petitioner filed a timely appeal.

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

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.

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.

(vii) *Good faith marriage.* Evidence of good faith marriage 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.

In this case, the record shows that the petitioner married [REDACTED], a U.S. citizen, on October 10, 2001 in San Juan, Puerto Rico. [REDACTED] filed a Form I-130 petition on the petitioner's behalf. The petitioner filed a Form I-485 application concurrently with the Form I-130 petition. On April 29, 2003, the director denied the Form I-485 for abandonment. On May 8, 2003, the director denied the Form I-130 petition for abandonment.

On April 29, 2004, the petitioner filed her Form I-360. On May 20, 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 documentation her marriage to the alleged abuser, that she and her alleged abuser spouse resided together, that she suffered battery or extreme cruelty perpetrated by the alleged abuser, that she is a person of good moral character, and that she married the alleged abuser in good faith. The petitioner requested an extension on July 19, 2004. On November 16, 2004, the director gave the petitioner a 60 day extension in which to respond to his request for additional evidence.

The first issue to be addressed is whether the petitioner established that she had resided with her alleged abusive spouse.

Joint Residence

The petitioner submitted her own statement in which she states that less than one week after her marriage, she had to travel to Venezuela for family and job reasons. She said that she returned to Puerto Rico in November 2001 but that by the beginning of 2002, her husband's mother was so ill, her husband spent a few days of the week at his parents' home taking care of them. The petitioner failed to expressly state that she shared a residence with her spouse. However, on the Form I-360 she indicated that she lived with her spouse from October 2001 to October 2002 at A-31 Calle Harding. According to a Form G-325A that the petitioner submitted to Citizenship and Immigration Services (CIS), she resided at [REDACTED] Baldrich, San Juan from June 2001 through January 2002. The petitioner's statement on her Form G-325A is inconsistent with her statement on her Form I-360. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner submitted statements from three friends, which all state that they occasionally visited the petitioner and her spouse at [REDACTED]. It is noted that the petitioner failed to submit a lease or rental agreement. She failed to submit correspondence addressed to the petitioner and her spouse at a shared residence. The petitioner also failed to submit an affidavit explaining why further evidence of her marital residence does not exist or is unobtainable. Accordingly, the present record does not establish that the petitioner resided with

her spouse.

The second issue to be addressed in this proceeding is whether the petitioner established that she had been battered by, or subjected to extreme cruelty perpetrated by, her spouse.

Battery or Extreme Cruelty

The petitioner indicated that her husband began to drink and use drugs after they married. She said that he became verbally aggressive and demanded money from her. She stated that her husband had an extramarital relationship with another woman. She said that she became depressed as a result of her husband's behavior. She submitted a letter from a counselor that indicates that the petitioner has been in counseling since January 2003 and began taking an antidepressant. The petitioner's statement was vague as to instances of abuse. Similarly, the statements written by three of the petitioner's friends are too general to be given much weight. [REDACTED] wrote that "on occasions [the petitioner's spouse] would turn aggressive, using abusive language towards [the petitioner]." She failed to indicate whether she observed this conduct first hand. [REDACTED] wrote that she personally witnessed the petitioner's spouse screaming improprieties to the petitioner. Again, the statement lacks sufficient details to be given weight.

The evidence in 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). Accordingly, the present record does not demonstrate that the petitioner was subjected to battery or extreme cruelty by her U.S. citizen spouse as required by section 204(a)(1)(A)(iii) of the Act.

Good faith marriage

The next issue to be addressed in this proceeding is whether the petitioner established that she entered into the marriage in good faith. As evidence of her good faith, the petitioner submitted her own statement, three photographs of herself and her spouse, a bank statement, a marriage certificate and statements from three friends.

In the statement provided by the petitioner, the petitioner fails to detail her reasons for marrying her spouse and to provide a statement regarding her intent at that time. She provided scant details of their courtship and marriage ceremony.

The petitioner's friends each state they attended the petitioner's wedding. None of them provide a statement regarding the petitioner's emotions or intent at the time of her marriage.

The single bank statement shows a balance of 35 cents, which is insufficient to show that the petitioner and her spouse commingled assets. Further, she submitted no evidence that she and her husband shared responsibilities, such as rental or mortgage payments and utility bills.

The remaining evidence, which consists of the petitioner's marriage certificate and photographs, are also insufficient to establish that the petitioner entered into his marriage in good faith and that he resided with his spouse. While the marriage certificate is evidence of a legal marriage, the fact that a legal marriage took place does not establish that the marriage was entered into in good faith or that the petitioner resided with her spouse after the marriage ceremony. Similarly, while the photographs are evidence that the petitioner and her spouse were together at a particular place and time, they do not establish the petitioner's intent at the time of her marriage or that she resided with his spouse.

The current record does not establish, however, that the petitioner resided with her spouse, that her spouse battered or subjected her to extreme cruelty during their marriage, or that she entered into the marriage in good faith pursuant to the regulations at 8 C.F.R. §§ 204.2(c)(1), 204.2(c)(2). The petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

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.