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U.S. Citizenship
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Services

By

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FILE:

EAC 04 255 53002

Office: VERMONT SERVICE CENTER

Date: JUL 06 2006

IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Mexico who seeks classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien subjected to battery or extreme cruelty by her lawful permanent resident spouse. The petitioner filed her Form I-360 on September 10, 2004. On September 17, 2004 and again on April 6, 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 of the petitioner's marriage; evidence that her spouse has or had lawful permanent resident status or U.S. citizenship; evidence that she had resided with her spouse; evidence that the petitioner or her child had been subjected to battery or extreme cruelty by her spouse; evidence that she married in good faith; and, evidence of her good moral character. The petitioner did not respond to the director's request until August 8, 2005, long after the 60-day period granted to submit additional evidence. On July 27, 2005, the director denied the petition, finding that the petitioner had failed to establish her eligibility for the benefit sought. On appeal, counsel submits a brief. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish her eligibility for the benefit sought. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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)(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.

(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 evidence will be considered.

In this case, the record shows that the petitioner married [REDACTED] a lawful permanent resident of the United States, on July 18, 1997 in Los Angeles County, California. [REDACTED] filed a Form I-130 petition for alien relative on the petitioner's behalf on October 21, 1997. On January 21, 1998, the Form I-130 was approved. On September 10, 2004, the petitioner filed her Form I-360.

The first issue to be addressed is whether the petitioner established that she resided with her lawful permanent resident spouse during the marriage.

Joint Residence

According to the Form I-360 and Form I-130, the petitioner and her spouse resided together from 1994 until 2004 at [REDACTED]. There is no corroborative evidence in the record establishing that they resided together, except for their marriage certificate. According to their marriage

certificate, the petitioner and her spouse resided at [REDACTED] Pasadena, California and listed their mailing address as [REDACTED] El Monte, California.

The petitioner did not submit documentation of the types specified in the regulation at 8 C.F.R. § 204.2(c)(2)(iii), such as employment records, utility receipts, deeds, mortgages, rental records, or joint insurance policies evidencing her joint residence with her husband. 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 husband.

The next issue to be addressed is whether the petitioner established that she is a person of good moral character as defined in the Act.

Good Moral Character

In his April 6, 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). The petitioner submitted no evidence relating to her good moral character in response to the director's request. On appeal, the petitioner also fails to submit police clearances, state criminal background checks, or an explanation of why such records are unavailable or unobtainable. 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).

The next issue to be addressed is whether the petitioner established that she entered into the marriage in good faith.

Good Faith Marriage

In his April 6, 2005 notice, the director asked the petitioner to submit evidence that she married her spouse in good faith. The director listed the types of evidence she could submit, such as insurance policies in which she or her husband is named as the beneficiary; bank statement, tax records, evidence of their courtship, wedding ceremony, residences; evidence of joint ownership of property; birth certificates of children born of the marriage; and affidavits of friends and family who can provide specific information verifying her relationship with her spouse. In response to the notice, the petitioner submitted evidence that a sheriff had sought to serve her husband with an order to show cause, without success. She submitted an application and declaration for a domestic violence prevention order. On the application, she indicated that two children were born of the marriage in 1997, [REDACTED] and [REDACTED].¹ She failed to submit copies of the children's birth certificates. The petitioner provided none of the evidence suggested by the director. The evidence is insufficient to establish that the petitioner

¹ The director indicated that the child's birth certificate did not list a father.

entered into the marriage in good faith.

The director determined and the AAO concurs that the petitioner has not established her eligibility for the benefit sought and the petition should be denied. 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 his 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.