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U.S. Citizenship  
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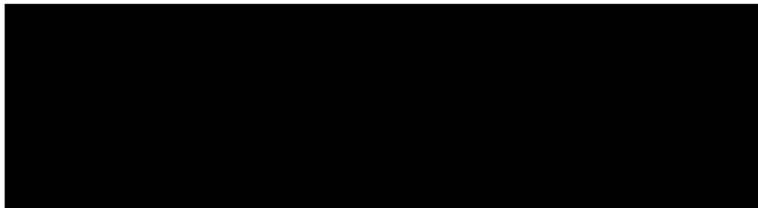


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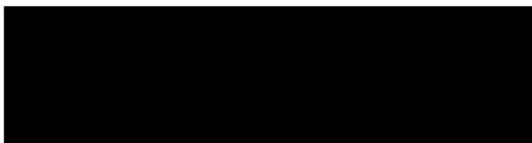
Date: JUL 06 2006

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center Director 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 of the former Soviet Union and a citizen of Israel 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 the battered spouse of a United States citizen.

On June 29, 2005, the director denied the petition, finding that the petitioner had failed to establish that she had been battered by, or the subject of extreme cruelty perpetrated by, her U.S. citizen spouse.

On appeal, counsel for the petitioner submits a statement.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

\* \* \*

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The 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 . . . 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 or lawful permanent resident spouse, 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.

According to the evidence in the record, the petitioner entered the United States as a B-2 nonimmigrant visitor on December 7, 2002 with authorization to remain until June 6, 2003. The petitioner wed naturalized United States citizen [REDACTED] on December 21, 2002 in Waukegan, Illinois. The petitioner’s spouse filed a Form I-130 on the petitioner’s behalf on February 10, 2003. The petitioner concurrently filed a Form I-485 on February 10, 2003. [REDACTED] withdrew the petition on May 4, 2004 and the petition was denied on August 28, 2004. On October 8, 2004, the petitioner filed a Form I-360 self-petition, seeking classification as a special immigrant.

Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner’s eligibility, the director issued a notice requesting the petitioner to submit evidence (RFE) that her prior marriage had been terminated, that her citizen spouse subjected her to battery or extreme cruelty, that she entered

into their marriage in good faith and is a person of good moral character. The petitioner included her two children as derivative beneficiaries on her Form I-360. The director requested the petitioner to submit her children's birth certificates. On May 31, 2004, the petitioner responded to the RFE and submitted additional evidence.

The issue to be addressed in this proceeding is whether the petitioner established that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse, as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(E).

In support of her claim of abuse, the petitioner initially submitted a police incident report, copies of two photographs showing a large scratch on her chest and a statement prepared in support of her petition for an order for protection. According to the police incident report dated April 17, 20204, the petitioner told the police that she and her husband were arguing about their new puppy, she picked the puppy up and started to walk away and her husband attempted to snatch the puppy away. She related that she was scratched on her chest but was unsure if her husband meant to scratch her. A typed statement submitted in support of a petition for an ex parte order of protection states that on April 17, 2004, the petitioner's spouse started throwing her belongings out the house, pushed her and told her to get out and attempted to leave the house but her husband blocked the door, grabbed her by the arms and twisted them, grabbed her necklace and tore it off causing scratches on her neck, which were bleeding. The director noted that the information, which the petitioner provided to the police, was inconsistent with the information she provided the court in support of her petition for an order for protection. On appeal, counsel for the petitioner asserts that the discrepancy can be explained by the fact that the petitioner's command of English is poor. Counsel's assertion is not persuasive. The two renditions of the same incident are drastically different from the other.

The petitioner submitted an ex parte protection order valid for three weeks, and statements from a neighbor and the petitioner's daughter. The petitioner's daughter wrote a letter indicating that the petitioner's spouse threatened to use a belt on her brother. She said that the petitioner's spouse put handcuffs on her once and that it really hurt such that she could not talk or breathe for a couple of seconds. She wrote that she and her brother often ate at a neighbor's house because they did not have enough food in the house. She said that the petitioner's spouse prohibited her and her brother from seeing friends and that he showed off "all of his guns and bullets." She said that one day he ripped her mother's necklace off her neck and caused her to bleed. She said that he used abusive language towards all of them. The petitioner's neighbor, [REDACTED] wrote that [REDACTED] became verbally and physically aggressive once or twice a week, causing the petitioner's children to run to her home. She said that the children told her that [REDACTED] put handcuffs on the petitioner's daughter a few times and threatened to use an electroshock device on the petitioner. She also said that she lent money to the petitioner for milk and cereal because [REDACTED] did not give them the "minimum for basic survival."

Because the petitioner furnished insufficient evidence to establish that she has been abused by, or the subject of extreme cruelty perpetrated by her citizen spouse, the director asked her to submit additional evidence on April 4, 2004. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. The director specifically asked the petitioner to explain the discrepancy

noted above and the documents regarding a hearing scheduled for June 7, 2004 on her order for protection.

In response, counsel for the petitioner submitted a copy of a stipulated order in which the June 7, 2004 hearing date was stricken, the petitioner's spouse was awarded exclusive use and occupancy of the marital residence, and the petitioner's spouse would pay the petitioner \$3,000 for the petitioner's moving expenses provided she vacated the premises and turned them over to her spouse in suitable condition.

In his request for additional evidence, the director asked the petitioner to explain the discrepancy between her assertions that she did not have enough food for the children and the documentary evidence she had a credit card with a credit line of \$17,000. In response, counsel for the petitioner stated that the petitioner could not use the credit card without her husband's permission.

The petitioner submitted a document titled "initial psychiatric evaluation," which is illegible. It is not evident that the report relates to the petitioner. There do not appear to be any specific details regarding abuse in the report. The director determined, and the AAO concurs, that the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse.

Accordingly, the petitioner has not established that she has been battered by, or subjected to extreme cruelty by, her U.S. citizen spouse. She is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, parallel, and her self-petition must be denied. However, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID).

The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

*Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petition, 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.

In this case, the director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of an 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.

On remand, the director should address two additional issues: whether the petitioner established that she was married to the citizen spouse as of the date of filing the instant petition, and whether she entered into the marriage in good faith. The petitioner provided scant evidence to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). The petitioner failed to submit an affidavit to Citizenship and Immigration Services (CIS) explaining how, where and when she met her citizen spouse. She failed to describe any shared experiences apart from the alleged abuse. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

The director should ask the petitioner if she is still married to the citizen spouse and whether divorce proceedings have been initiated. If divorce proceedings have been initiated, the director should request that the petitioner submit copies of petitions, and court orders relating to her divorce proceedings.

The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the petitioner and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always in these proceedings, the burden of proof rests solely 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 this decision.