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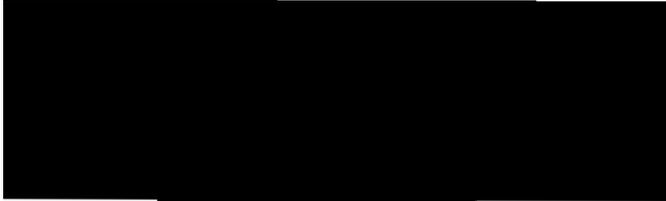
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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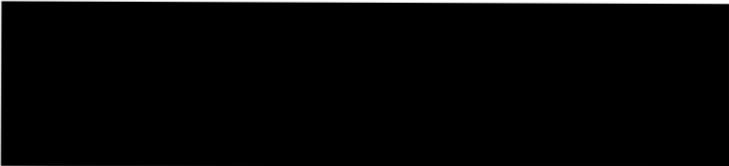
IN RE:

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 preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition on September 27, 2005, finding that the petitioner failed to establish that she was battered by or subjected to extreme cruelty by her spouse and that she entered into her marriage in good faith.

The petitioner, through counsel, filed a timely appeal on October 28, 2005.

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 [Secretary of Homeland Security] that—

- (aa) the marriage or the intent to marry the 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)(2)(iv) states:

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 abused 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.

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 record reflects that petitioner married United States citizen [REDACTED] on June 12, 1997, in Columbia, South Carolina. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on June 26, 1997. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 and Form I-485 were denied on November 17, 1998 for abandonment.

The petitioner filed the instant Form I-360 self-petition on October 25, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage.

With her initial submission, the petitioner submitted a personal statement and birth certificate with translation, and a copy of her marriage certificate. The director determined this evidence was not sufficient to establish the petitioner's prima facie eligibility as a battered spouse of a United States citizen and on November 1,

2004, requested the petitioner to submit evidence that she is a person of good moral character and that she married her spouse in good faith.

The petitioner responded to the director's request on January 3, 2005 and requested additional time in which to respond. The director granted the petitioner's request for additional evidence on January 25, 2005.

On February 18, 2005, the petitioner submitted three affidavits from acquaintances and a police certificate from the South Carolina Law Enforcement Division indicating that the petitioner has no record.

On April 18, 2005, the director requested further evidence to establish the petitioner's eligibility. Specifically, the director requested further evidence to establish the petitioner's claim of abuse and that she entered into the marriage in good faith.

On June 20, 2005, the petitioner requested additional time in which to respond to the director's request for evidence. The director granted the petitioner's request on July 22, 2005. The petitioner responded on July 28, 2005 by submitting a second personal statement, an additional affidavit, and a letter from the Red Cross.

On September 27, 2005, after reviewing the evidence contained in the record, including the evidence submitted in response to the director's request, the director denied the petition without the issuance of a notice of intent to deny (NOID) in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii),¹ finding that the petitioner had failed to establish that she was battered by or subjected to extreme cruelty by her spouse and that she entered into her marriage in good faith.

On appeal, counsel states the following as the reason for the appeal:

[The petitioner] unfortunately hired a firm called the "Immigration Clinic" to file her I-360 case. This firm was shut down by Law Enforcement for illegal operations and fraud. [The petitioner's] case was improperly handled and evidenciary [sic] documents were not filed.

Counsel also submits a copy of an article which indicates that two employees of the immigration clinic in question were arrested.

Regarding counsel's claim that the petitioner's case was "improperly handled" by her previous representative, we note that any appeal based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned

¹ 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-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.

be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). In this instance, counsel does not submit any evidence to support the ineffective assistance of counsel claim. 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).

As will be discussed, upon review, we concur with the finding of the director that the record is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her spouse and that she entered into the marriage in good faith. The petitioner's appellate submission does not overcome the director's findings.

The affidavits submitted by the petitioner's acquaintances in support of the petition do not offer any specific information to support the petitioner's claims of abuse. In the affidavit from [REDACTED] despite [REDACTED] indication that she "visited with [the petitioner and her spouse] very often," [REDACTED] does not describe any incident of battery or extreme cruelty. Rather, [REDACTED] indicates that after the petitioner's spouse left her to pursue his job, the petitioner had to walk to work and the store and had very little money.

In the affidavit from [REDACTED] [REDACTED] states that she never saw the petitioner's spouse physically abuse the petitioner but that she "would not doubt that it happened." [REDACTED] gives no indication that the petitioner ever indicated that she was physically abused by her spouse and, in fact, indicates that she was "not sure of the problems but [the petitioner's] spouse quit work and left town."

The affidavit from [REDACTED] indicates that the petitioner's spouse was "very close to a lot of different women," that he drank a lot, seemed to be "very jealous," and left for good, leaving the petitioner in "a very bad economic situation."

The petitioner's affidavits do not provide any specific details regarding the petitioner's claim of battery or extreme cruelty. The affidavits focus mainly on the petitioner's economic situation after the petitioner's spouse left their home.

The remaining evidence to support the petitioner's allegations of abuse consists of the petitioner's statements. In her initial statement, the petitioner claims that her spouse would get drunk and force the petitioner to have sex, that on one occasion her spouse threw his shirt in her face, that her spouse would call her names, and ultimately left her saying that he had a good job opportunity and that he had to travel. In her second statement, the petitioner makes additional claims that her spouse would flirt with other women, that her spouse would not let her talk to anyone, and that on one occasion her spouse hit her when she told him that she "didn't have to have sex with him."

The petitioner's claims that her spouse would flirt with other women and left her for a job opportunity are not sufficient to establish a claim of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner's claims that her spouse did not want her to talk to anyone and that this was a "pretense [sic] to control her" are not supported. It is clear from the petitioner's statements and those of her acquaintances that the petitioner had a number of friends, was able to leave the home on her own, and also had a job. Such facts are not consistent with a claim of control or economic coercion.

As it relates to a claim of battery, we note the petitioner's failure to claim the incident in which she was hit by her spouse in her first statement. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based upon the above discussion, without any other documentary evidence to support the petitioner's claims, we find the petitioner's statements and those of her acquaintances do not carry sufficient weight to establish a claim of battery or extreme cruelty.

As it relates to the petitioner's claim that she entered into her marriage in good faith, the record contains the petitioner's statements and the statements of the petitioner's acquaintances. The petitioner's statement does not contain information regarding how she met her spouse, how long they dated, or which provides insight as to her intent at the time of the marriage. The affidavits from the petitioner's acquaintances provide no further information regarding the petitioner's relationship with her spouse prior to the marriage or her intent to share a life with her spouse.

The record also contains a lease and a bank statement that were submitted in support of the Form I-130 filed in the petitioner's behalf. The lease indicates that the petitioner and her spouse had a month-to-month lease beginning May 1, 1996. However, the record lacks any evidence, such as rent receipts or cancelled checks to show that the petitioner and her spouse resided together after May 1996. The bank statement contained in the record, which was opened one day after the petitioner married her spouse, is in the petitioner's spouse's name only. Given the petitioner's claim that she resided with her spouse for six years, we would expect ample evidence such as medical bills, tax information, junk mail, insurance policies, or financial documentation. The lack of such evidence does not support a claim that the petitioner intended to establish a life with her spouse.

In accordance with the above discussion, we concur with the determination of the director that the record is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her spouse and that she entered into her marriage in good faith. Despite our support of the director's findings, however, the director's decision cannot stand because of the director's failure to issue a NOID to the petitioner prior the issuance of the denial.

Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a NOID as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

Although the director's decision rested on the two issues discussed above, we find an additional issue that needs to be addressed on remand. Despite noting discrepancies between the petitioner's claims on the Form

I-360, in her statement and her acquaintances' affidavits regarding her residence with her spouse, the director made an affirmative finding regarding the petitioner's claim that she resided with her spouse. On remand, the director should request the petitioner to address the following inconsistencies, as noted by the director in his decision:

. . . [O]n this [I-360] petition, you claimed that you resided with your spouse from 1996 until 2002 and that you last resided with him at [REDACTED] . . . Your statement indicates that shortly after your marriage is when your spouse left and you moved in with [REDACTED] because you could not afford the rent for the trailer. According to [REDACTED] statement, your spouse left in October 1998 and she invited you to come and stay with her. Although you claim that you last resided with your spouse at [REDACTED] Street in 2002, your statement as well as [REDACTED] statement contradicts this.

The petitioner should also be afforded the opportunity to submit additional evidence, such as utility bills, tax statements, financial documents, rent receipts, or pay stubs which reflect that the petitioner and her spouse resided together as claimed.

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 which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.