



U.S. Citizenship
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FILE:

EAC 05 247 52597

Office: VERMONT SERVICE CENTER

Date: JUN 12 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 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that she entered into marriage with her U.S. citizen husband in good faith, resided with him and that she was a person of good moral character.

On appeal, counsel submits a brief and additional evidence.

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).

Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, an alien who has divorced an abusive United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person

who was a bona fide spouse of a United States citizen within the past 2 years and –

* * *

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.

Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC).

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

(vi) 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.

* * *

(ix) *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 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.

(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.

The petitioner in this case is a native and citizen of Vietnam. On October 26, 2001, the petitioner married [REDACTED] a U.S. citizen, in Vietnam. The petitioner entered the United States on September 21, 2002 as the nonimmigrant spouse of a U.S. citizen (K3). The petitioner filed a previous Form I-360 on May 22, 2003, which was denied by the director on September 17, 2004 for failure to establish the petitioner's good faith entry into marriage with Mr. [REDACTED], her residence with him and her own good moral character. The petitioner's appeal of the director's 2004 decision was dismissed by the AAO on May 20, 2005. The petitioner filed the instant Form I-360 on September 12, 2005 with copies of the same documents submitted with her previous Form I-360 petition with the exception of an additional affidavit by the petitioner and her friend, [REDACTED]. In her November 15, 2005 decision denying this petition, the director incorporated her previous decision denying the prior Form I-360 and determined that the petitioner's additional affidavit did not establish her eligibility.

On appeal, the petitioner submits additional testimonial evidence, which demonstrates that she resided with Mr. [REDACTED] but does not establish her good faith entry into their marriage or her good moral character. Beyond the director's decision, the record also does not establish that the petitioner had a qualifying relationship with Mr. [REDACTED] That at the time this petition was filed. Despite these deficiencies, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii) before denying the petition.

Joint Residence

As evidence that she resided with Mr. [REDACTED] That, the petitioner initially submitted affidavits from herself and [REDACTED], which state that the former couple lived together at [REDACTED] in Stanton, California, but do not provide any further, probative details about the petitioner's residence with Mr. [REDACTED]. On appeal, the petitioner submits three additional, relevant affidavits. [REDACTED] the

¹ The record contains several documents that spell Mr. [REDACTED] name as [REDACTED] t." We use the spelling of his name as it appears on his naturalization certificate.

petitioner's friend, states that she met the petitioner in the Fall of 2002 when they both picked up their children from school and that the petitioner invited Ms. [REDACTED] to her house where Ms. [REDACTED] met Mr. [REDACTED]. Ms. [REDACTED] explains that because the petitioner did not have a car, Ms. [REDACTED] drove the petitioner's daughter to and from school each day and spoke to the petitioner every day. [REDACTED] states that because she was the petitioner's neighbor at the [REDACTED] address, she frequently talked to the petitioner and Mr. [REDACTED], the petitioner's former landlord, confirms that he rented a room to Mr. [REDACTED] in August 2002 and that about a month later, the petitioner and her children arrived and lived with Mr. [REDACTED]. Mr. [REDACTED] states that he observed the petitioner and Mr. [REDACTED] living together as husband and wife, that they appeared very happy shortly after the petitioner's arrival, but that he subsequently had to intervene in an argument to prevent Mr. [REDACTED] from leaving the petitioner.

The petitioner did not submit other documents of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii). However, the record shows that the petitioner resided with Mr. [REDACTED] for only one month before the couple separated. Given the short period of the former couple's joint residence, the affidavits of Ms. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED], combined with the statements of the petitioner and Mr. [REDACTED] are sufficient to establish that the petitioner resided with Mr. [REDACTED] as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. The petitioner has overcome this ground for denial.

Entry Into the Marriage in Good Faith

As evidence of her good faith marriage to Mr. [REDACTED] the petitioner initially submitted copies of photographs of the former couple and their wedding, her own declaration and six affidavits from her relatives and friends. The copied photographs show that a wedding ceremony and reception took place, but do not establish the petitioner's good faith in entering the marriage. The petitioner's sister, mother, aunt and friends, [REDACTED] and [REDACTED] all attest to attending the petitioner's wedding ceremony or reception, but none of these affiants discuss the petitioner's own good faith in marrying Mr. [REDACTED] as observed by them. Mr. [REDACTED] states that, as a mutual friend, he introduced the petitioner to Mr. [REDACTED] and frequently stopped by the couple's home after the petitioner arrived in the United States. Mr. [REDACTED] further states, "I knew that they got married in good faith and wanted to have a happy life together." Yet Mr. [REDACTED] does not discuss the basis for his belief or provide any probative details about the petitioner's intentions in marrying Mr. [REDACTED] or the former couple's marital relationship, as observed by him during their courtship and joint residence.

In her August 1, 2005 declaration, the petitioner states that she married Mr. [REDACTED] in accordance with Vietnamese tradition and rituals, that many guests attended their wedding, and that the couple went sightseeing and visited relatives for a few days after their marriage in Vietnam. The petitioner further states, "I entered into the marriage in good faith with the hope and understanding that my husband would love me and my children and that I could spend the rest of my life with him." Yet the petitioner does not discuss how she met Mr. [REDACTED] does not confirm Mr. [REDACTED] statement that he introduced her to Mr. [REDACTED] and does not describe the former couple's courtship, shared residence or any shared experiences (apart from Mr. [REDACTED]'s abuse) in any substantive detail.

On appeal, the petitioner submits an additional affidavit from Mr. [REDACTED] as well as the affidavits of Ms. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED]. In his affidavit dated January 5, 2006, Mr. [REDACTED] states that he was a close friend of the petitioner and explains, "She confided to me that she was looking for a good person to marry and live with for the rest of her life." Mr. [REDACTED] states that he then introduced the petitioner to Mr. [REDACTED] that Mr. [REDACTED] went to Vietnam to meet the petitioner and they later got married. Mr. [REDACTED] states, "I knew that [the petitioner] and [Mr. [REDACTED]] had entered into a bona fide marriage." Again, Mr. [REDACTED] fails to provide probative details about the petitioner's good faith, as observed by him, during the former couple's courtship and marriage. As discussed above, the affidavits of Ms. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] confirm that the petitioner resided with Mr. [REDACTED] but these affidavits provide no probative details about the former couple's marital relationship (apart from Mr. [REDACTED] That's abuse) and none of the affiants knew the petitioner before her arrival in the United States and consequently cannot attest to her intentions at the time she married Mr. [REDACTED].

Given the short duration of the petitioner's residence with and marriage to Mr. [REDACTED] it is understandable why she did not submit any other documentary evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Accordingly, we have reviewed all the relevant testimonial evidence. However, the affidavits submitted below and on appeal fail to establish the petitioner's good faith entry into marriage with Mr. [REDACTED] as required by section 204(a)(1)(A)(iii) of the Act.

Good Moral Character

As evidence of her good moral character, the petitioner initially submitted only her own statement that she had not been arrested, charged or convicted of any crime in the United States or Vietnam. The petitioner did not submit a local police clearance or a state-issued criminal background check pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v).² On appeal, the petitioner submits no evidence concerning her moral character. The present record thus fails to 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.

Qualifying Relationship

Beyond the director's decision, the present record also fails to establish that the petitioner had a qualifying relationship with Mr. [REDACTED] at the time this petition was filed. On her Form I-360 and in

² With the petitioner's appeal of the denial of her prior Form I-360, she submitted a State of California criminal record check showing her lack of any criminal history. That document was not considered by the AAO because it was offered for the first time on appeal even though the director had requested such evidence prior to her denial of the petition. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). Even if we considered the California criminal record check here, it would be insufficient to establish the petitioner's good moral character. The document is dated November 9, 2004 and does not cover the succeeding 10 months before this petition was filed.

her August 1, 2005 declaration, the petitioner stated that she was married to Mr. [REDACTED]. However, with her Form I-485, Application to Adjust Status, the petitioner submitted a copy of Mr. [REDACTED] Petition for Dissolution of Marriage filed with the Orange County Superior Court of California on November 27, 2002. Without evidence of the court order dissolving the petitioner's marriage to Mr. [REDACTED] or evidence that her divorce case was still pending at the time this petition was filed on September 12, 2005, we cannot determine whether the petitioner had a qualifying relationship with Mr. [REDACTED] pursuant to section 204(a)(1)(A)(iii)(II) or section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act.

The present record fails to establish that the petitioner entered into her marriage with Mr. [REDACTED] in good faith, that she is a person of good moral character and that she had a qualifying relationship with Mr. [REDACTED] at the time this petition was filed. 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 denied the petition without first issuing a 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-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.

Accordingly, the case will be remanded for issuance of a NOID, 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.