



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: MAY 30 2006

EAC 05 049 51670

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Iran who last entered the United States on June 21, 1996 as a B-2 nonimmigrant and 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 petitioner filed her Form I-360 on December 3, 2004. On April 21, 2005 and again on June 16, 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 evidence that the petitioner had entered into the marriage in good faith and evidence of her good moral character. The petitioner responded to the director's request and on August 12, 2004, the director denied the petition, finding that the petitioner failed to establish that she entered into the marriage in good faith. On appeal, the petitioner asserts that the Violence Against Women Act (VAWA) requirements have been met and that her life is in jeopardy and a brief would be filed within 30 days of filing the appeal. More than 7 months have lapsed and nothing more has been submitted to the record. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish that she entered into the marriage in good faith. 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)(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 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.

The evidence on the record shows that the petitioner wed [REDACTED] a U.S. citizen, on October 14, 2003 in Minnesota. [REDACTED] filed a Form I-130 petition for alien relative on the petitioner's behalf on March 19, 2004. The petitioner filed a Form I-485 concurrently with the

Form I-130. The petitioner filed her Form I-360 on December 3, 2004.

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

In her declaration dated November 2004, the petitioner states that she met her husband at a party in October 2000; they started dating and fell in love with one another. She states that her husband suggested that she move in, so she did so in August 2001. They wed on October 14, 2003 in Minnesota. She does not further explain how she and her husband met, their courtship, decision to live to marry, wedding, honeymoon (if any), or any of their shared experiences apart from her husband's alleged abuse and his alcohol-related arrests.

The petitioner did not submit any documentary evidence of her good faith entry into marriage with [REDACTED] of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Without additional corroborative documentation, the evidence is insufficient to establish that the petitioner entered into her marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(ix).

On remand, the director should also consider whether the petitioner established that she was battered by or was the subject of extreme cruelty perpetrated by her spouse. The petitioner submitted her own statement, a police incident report and a letter written by a Marriage and Family Therapy (MFT) Intern.

The petitioner stated that her marital problems escalated three weeks into the marriage due to her husband's "excessive drinking, his abusive behavior, and foul language." She indicated that her husband humiliated her by his inebriation. She said that in one incident, he pushed her to the ground, kicked, her and pulled her hair. She mentioned another incident in which her husband grabbed her hair and pushed her to the ground. She said that he called her names. She stated that in March 2004, her husband accused her of being an agent of the FBI or CIA, attacked her, causing her to bruise and bleed and that he raped her. She related another instance in Los Angeles when her husband cursed her in the presence of friends and later he tried to wrest control of the steering wheel while she was driving. She stated that her husband kicked the car door on her side of the car in the presence of two police officers and that he was arrested. The petitioner stated that on July 9, 2004, her husband became drunk, pushed her, cut her shampoo bottles with a knife and that the neighbors called the police.

The July 9, 2004 police report describes the incident as "only a verbal argument" and that "no assault occurred. The report shows that the petitioner and her spouse had an argument and that she only wanted to leave for the airport. The report does not indicate that [REDACTED] used or threatened to use force against the petitioner.

The petitioner submitted evidence that her spouse was sentenced to two days in jail by the Superior Court of California on June 16, 2004. She failed to submit a police incident report or a charging document that might corroborate her claim that she was present when he was arrested in California and

that he kicked her car door in the presence of the police.

The petitioner also submitted a letter dated October 26, 2004 and addressed to counsel from [REDACTED], Marriage and Family Therapy Intern, and [REDACTED] Marriage and Family Therapist, and clinical supervisor of the [REDACTED] located in Tarzana, California. The letter primarily summarizes the petitioner's relationship with her spouse as related to her by the petitioner herself. [REDACTED] states that she believes the petitioner presents symptoms of Adjustment Disorder with Mixed Anxiety and Depressed Mood. [REDACTED] states that during the psychotherapy sessions, the petitioner "has been cooperative and committed to getting support and self care necessary to withstand emotional stressors of current life situation." [REDACTED] provides no other professional assessment or diagnosis of the petitioner and notes no physical or psychological effects of [REDACTED] alleged abuse on the petitioner, as directly observed by her during the interview. In addition, [REDACTED] does not indicate that she has any specific training or experience in diagnosing and treating survivors of domestic violence. For these reasons, her assessment is of little probative value.

The petitioner submitted considerable documentation regarding [REDACTED] arrest record. He was arrested on July 5, 2004 and was charged with driving while under the influence, refusal to submit to a chemical test, careless driving, possession of a switchblade knife and a small amount of marijuana. [REDACTED] was charged again on July 16, 2004 with driving while under the influence, refusal to submit to a chemical test and careless driving. The documents do not indicate that the petitioner was the victim or was present during any of [REDACTED] offenses.

The documents submitted by the petitioner do 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). In addition, the petitioner submitted no evidence that she ever sought assistance from the police, religious figures, the courts or a shelter to help her deal with her husband's conduct. She failed to submit corroborating evidence in the form of affidavits from witnesses to the abuse. 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.

The current record does not establish that the petitioner entered into the marriage in good faith or that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage 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 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.