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U.S. Citizenship
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Services

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FILE: [REDACTED]
EAC 05 049 51763

Office: VERMONT SERVICE CENTER

Date: MAY 31 2006

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:



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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 had a qualifying relationship with a U.S. citizen, that she was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on such a relationship, that she resided with the U.S. citizen, that he battered or subjected her or her child to extreme cruelty during their relationship, or that she entered into the qualifying relationship in good faith.

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 or the alien's child 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) 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by . . . evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

(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.

* * *

(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 of Iran and citizen of Sweden who entered the United States on September 2, 2003 as a nonimmigrant under the Visa Waiver Program. On July 18, 2002, the petitioner married [REDACTED], a U.S. citizen, in Las Vegas, Nevada. The petitioner filed this Form I-360 on December 3, 2004. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a notice on July 11, 2005 requesting the petitioner to submit evidence of, *inter alia*, the legal termination of her prior marriage, her residence with [REDACTED] her entry into their marriage in good faith, and evidence that [REDACTED] battered or subjected the petitioner or her child to extreme cruelty. On August 8, 2005, counsel submitted a document relating to the petitioner's prior divorce and a letter explaining that the petitioner fled her marital home due to her husband's abuse and consequently did not have access to documentation of their joint residence and good faith marriage. On August 31, 2005, the director denied the petition because the record failed to establish: the legal termination of the petitioner's prior marriage and, hence, the validity of her marriage to [REDACTED] and her eligibility for immediate relative classification based on their marriage; her residence with [REDACTED] her good faith entry into their marriage; and [REDACTED] battery or extreme cruelty.

On appeal, counsel submits further documentation of the petitioner's prior divorce, copies of the former couple's joint banking account documents, a joint automobile insurance policy statement, a joint residential lease, and documents relating to their joint federal income tax records. The evidence submitted on appeal overcomes four of the five grounds for denial in the director's decision. However, counsel does not address the remaining issue of battery or extreme cruelty in her appellate brief and submits no documentation relevant to this issue. Accordingly, we concur with the director's determination that the record does not establish that [REDACTED] battered or subjected the petitioner or her child to extreme cruelty during their marriage. Nonetheless, the case will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Qualifying Relationship and Eligibility for Immediate Relative Classification

The petitioner initially submitted an extract from the population registry of the Swedish Tax Authority, which identifies the petitioner as having been divorced on September 29, 1998. The director found the extract insufficient to establish the legal termination of the petitioner's prior marriage. On appeal, the petitioner submits a copy and certified translation of the Stockholm District Court order granting the divorce of the petitioner and her former husband on September 8, 1998, nearly two years prior to her marriage to [REDACTED]. The court order establishes the legal termination of the petitioner's prior marriage; the validity of her marriage to [REDACTED] and her eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on her marriage to [REDACTED]. Accordingly, the petitioner has overcome these two grounds for the denial of her petition.

Joint Residence

In her statement dated November 17, 2004 and submitted below, the petitioner reports that she lived with [REDACTED] in Las Vegas, Nevada, first residing at [REDACTED] and later at [REDACTED]. The petitioner submitted no corroborative documentation of her residence with [REDACTED] but explained that she quickly fled their apartment with her son on July 26, 2004 to escape [REDACTED] mistreatment. On appeal, the petitioner submits a residential lease account statement signed by the manager of the building at [REDACTED]. The statement lists the petitioner and [REDACTED] as the residents of unit number [REDACTED] and states that their lease began on June 2, 2004, was set to expire on December 31, 2004, but that the couple moved out on September 21, 2004 due to a marital status change. On appeal, the petitioner also submits a copy of a Notice of Levy from the Internal Revenue Service (IRS) for an unpaid balance on the former couple's 2003 joint income tax return. The notice lists the petitioner and [REDACTED] as the taxpayers at the [REDACTED] address. These documents establish that the petitioner resided with [REDACTED] and overcome this basis of denial.

Entry Into the Marriage in Good Faith

In her November 17, 2004 statement, the petitioner explains that she first met [REDACTED] at a friend's house when she was visiting her sister in the United States. She states that [REDACTED] later began calling her after she returned to Sweden and the couple became friends and maintained a relationship for approximately three years. When [REDACTED] professed his love and desire to have a family with the petitioner, she states that she came to the United States to visit him on June 10, 2002 and that the couple was married on July 18, 2002. The petitioner states that [REDACTED] love and tenderness overcame the 17 year difference in their ages and that [REDACTED] was nice and gentle during the first couple of months of their marriage. The petitioner states that she lived with [REDACTED] in Las Vegas from November 2002 to the summer of 2003, when she left to visit her son and [REDACTED] was incarcerated. The petitioner explains that after [REDACTED] release from prison, the couple reconciled and lived together in Las Vegas from June through July, 2004.

The petitioner's sister, [REDACTED] in her statement submitted below, confirms that the petitioner met [REDACTED] in 1998 and that the couple was married after the petitioner came to the United States for a visit, but [REDACTED] offers no probative details regarding the couple's courtship, the petitioner's behavior (as observed by [REDACTED] during the former couple's courtship and wedding, or the couple's marital relationship apart from the alleged abuse. The petitioner submitted no other corroborative evidence of her good faith entry into marriage with [REDACTED] although (as previously noted) she explains that she suddenly fled their home to escape [REDACTED] mistreatment.

On appeal, the petitioner submits the aforementioned account statement for the couple's residence at [REDACTED] between June 2 and September 21, 2004 and the IRS notice showing that the couple jointly filed their 2003 income tax return from that address. In addition, the petitioner

submits an automobile insurance bill dated June 3, 2004 that lists [REDACTED] and the petitioner as the insured drivers of the vehicle. The petitioner also submits a letter from the IRS addressed to the petitioner individually, but requesting payment for underpaid tax and penalty from the 2002 joint income tax return of the petitioner and [REDACTED]. This evidence corroborates the petitioner's statements and establishes that the petitioner entered into marriage with [REDACTED] in good faith. The petitioner has thus overcome this ground of denial.

Battery or Extreme Cruelty

As evidence of battery or extreme cruelty, the petitioner initially submitted her own statement, a copy of the court docket of [REDACTED] criminal cases that are unrelated to the petitioner, her sister's statement, and a letter from the petitioner's counselor at the Personal Growth Institute. We concur with the director's determination that these documents do not establish the requisite battery or extreme cruelty and we do not repeat his discussion here.

In her statement, the petitioner reports that her husband's behavior changed about two months after their marriage. She states that he would disappear for days in a row, was drunk most of the time he was home, called her derogatory names, did not allow her to wear make-up, have friends or leave the house without him or go to work or school, became angry if she called her son from her prior marriage and threw photographs of her son on the floor and stepped on them. The petitioner states that she was depressed and frightened for her life and went to visit her son from her prior marriage in England. The petitioner explains that while she was gone, [REDACTED] went to live with his former girlfriend and was arrested and convicted of attempted extortion, making a terrorist threat and conspiracy to commit a crime. When she returned to the United States, the petitioner states that [REDACTED] called her from prison and begged for another chance and pleaded with her after he was released from prison. The petitioner explains that they reconciled after [REDACTED] promised to let the petitioner work and go to school.

However, the petitioner states that soon after their reconciliation, on June 3, 2004, [REDACTED] pushed her to the wall, shook her violently, cursed her for leaving him, and threatened to kill her if she left or told anyone. The petitioner states that [REDACTED] slapped, pushed her and twisted her arm on numerous other occasions. She states that he threatened to get her deported, have her killed or hurt her family if she said anything to anyone or told the police. The petitioner explains that when her son came to visit them in July 2004, [REDACTED] continued to abuse her in front of her son and that on July 25, 2004, she fled with her son to stay with her sister in Los Angeles. The petitioner states that soon after their departure, [REDACTED] went to her sister's house, demanded to see her, did not leave until her sister threatened to call the police, and later telephoned threatening to kill the petitioner. The petitioner reports feeling depressed and saddened, states that she has lost over 10 pounds and cannot sleep because she is afraid [REDACTED] will hurt or kill her.

The record does not fully corroborate the petitioner's statements. [REDACTED] court records do not indicate that the petitioner was a victim of, or otherwise involved in, any of his crimes. The

petitioner's sister confirms that the petitioner has lost a lot of weight and is unable to sleep. [REDACTED] states that the petitioner and her son called [REDACTED] and told her of [REDACTED] behavior, but she does not indicate that she ever heard [REDACTED] violent actions while speaking to the petitioner or her son on the telephone or that she otherwise witnessed his alleged abuse. [REDACTED] states that after the petitioner came to live with her, [REDACTED] calls the petitioner, "cusses her in a very bad way" and "threatens to kill her or have her deported." Yet [REDACTED] does not indicate that she directly overheard or otherwise witnessed [REDACTED] insults and threats. [REDACTED] also does not discuss the incident described by the petitioner where [REDACTED] purportedly forced Mr. [REDACTED] to leave her residence by threatening to call the police.

In her letter dated October 14, 2004, [REDACTED] a Marriage and Family Therapy Intern and the petitioner's counselor at the Personal Growth Institute, states that the petitioner began individual psychotherapy on August 30, 2004. [REDACTED] states that the petitioner "presents general symptoms of Major Depression" and that the petitioner reported that her husband physically and verbally abused her during their marriage. [REDACTED] recommends that the petitioner continue her therapy, but does not discuss her condition or need for mental health treatment in any further detail. [REDACTED] does not, for example, describe the petitioner's affect and demeanor, as observed by her during their counseling sessions, and explain why such symptoms are consistent with the petitioner's description of Mr. Samanipour's alleged abuse. The record also does not document [REDACTED] professional qualifications or otherwise indicate that she has significant training and experience in diagnosing and treating survivors of domestic violence. Accordingly, [REDACTED] letter is of little probative value.

On appeal, counsel does not address the issue of battery or extreme cruelty and submits no additional evidence relevant to this issue. We concur with the director's determination that the present record fails to establish that [REDACTED] battered or subjected the petitioner or her son to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii) of the Act.

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.