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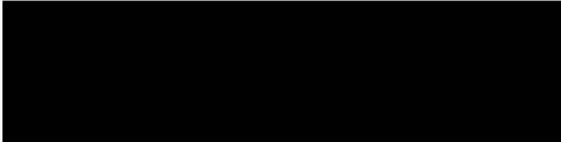
Date: MAR 15 2006

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, Director
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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.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 is a native and citizen of Thailand who is seeking 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.

According to the evidence in the record, the petitioner married United States citizen [REDACTED] on June 28, 2002 in Thailand. The petitioner entered the United States on October 10, 2003, as a K-3 nonimmigrant. The petitioner filed the instant Form I-360 on April 30, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage. The director denied the petition on March 24, 2005, finding that the petitioner failed to establish that she resided with her spouse and that she entered into the marriage in good faith.

The petitioner, through counsel, submits a timely appeal dated April 25, 2005.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, 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 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.

With the initial filing of her petition, the petitioner submitted copies of her spouse's birth certificate, her marriage certificate with translation, her former spouse's death certificate, a letter from the petitioner's sister and brother-in-law with the deed for their home, copies of the petitioner's and her children's birth certificates, visas and Forms I-94, a copy of the petitioner's legal name change with translation, a statement from the petitioner regarding her good moral character, documents from the Royal Thai Police and the Oceanside, California police department indicating that the petitioner has no criminal record, a copy of a receipt for a ring, and copies of the petitioner's children's school records

The director found this evidence was not sufficient to establish eligibility and on December 22, 2004, requested the petitioner to submit further evidence to establish that she resided with her spouse, that she had been battered by or subjected to extreme cruelty by her citizen spouse, that she entered into the marriage in good faith, and that she was divorced from her citizen spouse.

The petitioner responded to the director's request on February 1, 2005 by submitting a personal statement, a sworn statement from the petitioner's sister and brother-in-law, pictures of the petitioner with her citizen spouse, correspondence from the petitioner's citizen spouse to the petitioner, and a copy of the petitioner's divorce decree.

After reviewing the evidence contained in the record, including the evidence submitted in response to the director's request for evidence, the director noted inconsistencies between the petitioner's statements on the Form I-360, her personal statements, and the statements of her in-laws and found such evidence to be insufficient to establish that the petitioner resided with her spouse. Additionally, the director determined that the evidence in the record was not sufficient to establish that the petitioner entered into the marriage in good faith.

On appeal, counsel argues that the director abused in his discretion in determining that the petitioner failed to establish that she resided with her spouse and that she entered into the marriage in good faith. As it relates to the director's findings regarding the fact that the information contained on the Form I-360, the petitioner's statements and those of her in-laws contradicts each other, counsel states:

The applicant may have been confused as to what was asked as it relates to living arrangements but her attached declaration is a new declaration which explains these inconsistencies and states in detail why she lived with her sister prior to moving into the new apartment with her husband.

In her new statement on appeal, the petitioner states that she and her citizen spouse were "supposed to ultimately live in his house," but that when she first arrived "the whole family thought it would be better to

stay at my sister's house" The petitioner concludes that it was wrong for the director to conclude that she did not reside with her spouse because "we did spend the night at my sister's house before his violent outbreaks on October 11, 2003 and we intended to live in his apartment in Vista." The petitioner does not offer any explanation for the information she provided on the Form I-360 in which she indicated that she resided with her spouse for three days, October 10th, 11th and 12th, 2003 at [REDACTED] Vista, CA 92803," and for her initial statement in which she claimed that she was "forced to move out of the residency with my husband because of the abuse that I experienced immediately upon moving in with him into his residence." Further, contrary to counsel's assertion on appeal, the petitioner does not indicate that she was confused by what was asked regarding her living arrangements. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

It is noted that even if we were to disregard the inconsistent evidence contained in the record regarding the petitioner's residence with her spouse, the petitioner's most recent claim of residence with her spouse is based on the one night spent with her citizen spouse at her sister's home and the fact that she "intended" to live with her citizen spouse at his apartment. Thus, even if credible, such a claim would not be sufficient to establish that the petitioner resided with her citizen spouse.

The remaining issue is whether the petitioner has established that she entered into her marriage in good faith. In her initial statement, the petitioner provides no details about her courtship and relationship with her citizen spouse and states simply that she married him because she "loved him and wanted to live with him in the United States." In her second statement, the petitioner provides more specific details about her courtship but her description of her courtship casts doubts on her claim that she entered into her marriage in good faith. Specifically, in her second statement, the petitioner indicates that she first met her citizen spouse in June 2002. Regarding her reasons for marrying, she states:

My thought at that time were [sic] that this man might make me and my children have a better future, because of what I had heard of the United States, and with somebody that wanted us. So if after Tom had seen us and if he were proposed to me, I would accept happily.

The petitioner married her citizen spouse six days later. As proof to support her claim that she entered into the marriage in good faith, the record contains the petitioner's marriage certificate, photographs of the petitioner and her citizen spouse, and cards and letters between the petitioner and her citizen spouse. As indicated by the director, however, although a marriage certificate is evidence of a legal marriage, the fact that a legal marriage took place does not establish that said marriage was entered into in good faith. Similarly, the fact that the petitioner has submitted photographs which show that the petitioner and her citizen spouse were together at a particular place and time, does not establish the petitioner's intent at the time she entered into the marriage with her spouse. The correspondence contained in the record consists mainly of cards and letters from the petitioner's citizen spouse to the petitioner. As correctly noted by the director, correspondence written from the petitioner's spouse's perspective provides no basis for which to determine that the petitioner entered into the marriage in good faith. Although the petitioner submits two postcards, purportedly from the

petitioner to her citizen spouse, the postcards are undated and do not contain any postal stamp to demonstrate that these were actually mailed to the petitioner's spouse as the petitioner claims.

Based upon the inconsistencies noted in the statements contained in the record, combined with the lack of supporting evidence, we concur with the findings of the director that the evidence contained in the record does not establish that the petitioner resided with her spouse or that she entered into the marriage in good faith. However, because the director failed to issue a Notice of Intent to Deny (NOID) in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) which requires the director to issue a NOID in all cases where "the preliminary decision on a properly filed self-petition is adverse to the self-petitioner," the case must be remanded to the director for further consideration.

Accordingly, the decision of the director must be withdrawn. 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 applicant and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review.

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 this decision.