

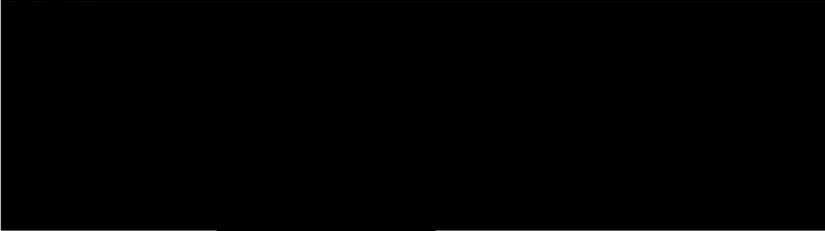
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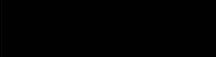
U.S. Citizenship
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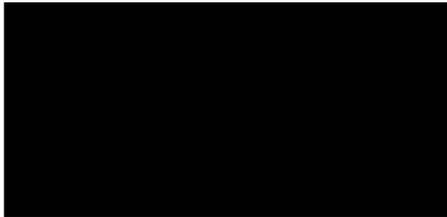
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Office: VERMONT SERVICE CENTER

Date: MAR 15 2006

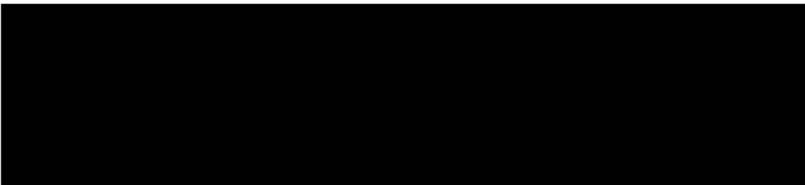
IN RE:

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)

IN 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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Vietnam who is seeking 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 the battered spouse of a United States citizen.

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 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;

* * *

(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.

According to the evidence in the record, the petitioner entered the United States on May 20, 2000 as a K-1 nonimmigrant fiancée to marry United States citizen [REDACTED] On the petitioner's Optional Form 230-I,

submitted in support of her fiancée petition, the petitioner indicated that she was “single (never married)” and that she had no children. On her Form I-129F, Petition for Alien Fiancée, the petitioner again indicated that she was “single,” that she had not been previously married, and that she had no children. The record reflects that the petitioner was interviewed by a consular official on February 18, 2000 and that she indicated on the Supplement Form OF-156 that she had not been previously married, that she had no children.

The petitioner and [REDACTED] were married in Sebastian, Arkansas on October 3, 2000 and the petitioner filed a Form I-485, Application to Adjust Status. The application was denied by the District Director, New Orleans District Office, on September 6, 2001. In his denial, the district director determined that the petitioner failed to enter into the marriage with [REDACTED] within the ninety-period after admission as a K-1 nonimmigrant, and that the record contained a divorce decree dated June 11, 2001, which indicated the petitioner was not married to her spouse at the time of filing the Form I-485.

The petitioner filed the instant Form I-360 on September 16, 2003, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage. On July 21, 2004, the director issued a notice of intent to deny the Form I-360 petition. The petition was denied on April 12, 2005, based upon the director’s determination that the petitioner failed to establish that in the two-year period preceding the filing of the petition she had a qualifying relationship as the spouse of a United States, that she resided with her spouse, that she was subjected to battery or extreme cruelty by her spouse, and that she entered into the marriage in good faith.¹

The petitioner, through her representative, filed a timely appeal dated May 13, 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;

¹ The record reflects that the denial was originally sent out on January 28, 2005 but had to be remailed to the petitioner’s representative’s new address of record on April 12, 2005.

(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.

With the initial filing of her petition, the petitioner submitted a personal statement with translation, four statements from friends regarding her good moral character, copies of her birth certificate, passport, social security card, identification card, driver's license, marriage certificate, divorce decree and related documents, three photographs of the petitioner and her spouse, and a statement from a friend regarding the alleged abuse.

The director found this evidence was insufficient to establish eligibility and on July 21, 2004, issued a notice of intent to deny. In the notice, the director noted that the petitioner's divorce decree was dated June 11, 2001, more

than two years prior to the filing of the petition. Accordingly, the director determined that the petitioner was unable to show that she had a qualifying relationship as the spouse of a United States citizen.² The director requested the petitioner to submit evidence to substantiate her claim that her spouse illegally obtained the divorce and that the divorce proceeding had been reopened. Additionally, the director requested the petitioner to submit evidence of the legal termination of her spouse's prior marriages, evidence that she resided with her spouse, evidence that she was battered by or subjected to extreme cruelty by her spouse, a police clearance, and evidence that she entered into her marriage in good faith.

As it relates to the petitioner's claim of abuse, the director requested the petitioner to submit evidence such as reports and affidavits from police, judges, court officials or medical personnel, evidence that the petitioner sought refuge in a shelter for the abused, and photographs of injuries. The director also requested that the petitioner submit a detailed statement regarding the alleged abuse, detailing her spouse's specific actions such as whether the abuse was verbal or physical, whether the petitioner was socially isolated, or whether her spouse was possessive.

As it relates to the petitioner's claim that she resided with her spouse and entered into the marriage in good faith, the director requested evidence such as joint leases, mortgages, or insurance policies, utility statements, bank statements, tax documents or other financial documents listing a common address and documents such as insurance policies listing the petitioner or her spouse as the beneficiary, bank statements, tax statements or other financial documents showing joint accounts and joint property. The director indicated that the evidence could consist of affidavits from friends and family describing the petitioner's courtship, wedding ceremony, and other special events.

The petitioner, through her representative, responded to the director's notice on August 27, 2004 and requested an additional 60 days in which to respond to the notice. The director granted the petitioner's request for additional time on October 27, 2004.

In response to the director's request the petitioner submitted a second personal statement, photographs of the petitioner and her spouse, an incident report from the Ft. Smith police department, a letter from [REDACTED] for Women dated December 9, 2004, a letter from attorney Rex Earl Starr regarding the petitioner's divorce and an "Application to Vacate Degree of Divorce," and related exhibits, filed on December 30, 2004, letters with accompanying translation from the petitioner's father and landlord, copies of health insurance cards for the petitioner and her spouse, a letter from the Clerk of the Sebastian County Court indicating no record for a divorce between [REDACTED] and [REDACTED] an employment verification letter, police clearances, the petitioner's 2001 Form W-2 Wage and Tax Statement, and the petitioner's Vietnamese "divorce consentment" for her divorce from [REDACTED].

After reviewing the evidence contained in the record, including the evidence submitted in response to the notice of intent to deny, the director denied the petition finding that the petitioner failed to establish that she has a qualifying relationship as the spouse of a United States citizen, that she entered into her marriage in good faith, that she resided with her spouse, and that she was battered by or subjected to extreme cruelty by her spouse.

On appeal, the petitioner, through her representative submits a brief letter with copies of evidence previously submitted as well as additional evidence. As it relates to the submission of new evidence on appeal, we note that because the petitioner had been put on notice of a deficiency in the evidence and was given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on

² Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act indicates that a self-petitioner must have been a "bona fide spouse of a United States citizen *within the past 2 years*" and must be able to demonstrate "a connection between the legal termination of the marriage with the past 2 years and battering or extreme cruelty by the United States citizen spouse."

appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). If the petitioner had wanted the additional information to be considered, she should have submitted it in response to the director's request for evidence, not on appeal. *Id.*

Upon review of the record that was before the director at the time of his decision, we concur with the director's finding that the record is not sufficient to demonstrate eligibility.

The first issue is whether the petitioner has established that she has a qualifying relationship as the spouse of a United States citizen. In his decision, the director determined that because the petitioner had been divorced for more than two years at the time of filing, the petitioner was statutorily ineligible for approval. The director indicated that although the petitioner had submitted an "Application to Vacate Decree of Divorce," such evidence was insufficient to establish that the proceedings had been reopened and that a judge had ordered the judgment of divorce to be vacated.

On appeal, the petitioner's representative states that the signature on the "waiver of service" was found by a "signature analyst to be a fraud." The representative further states that divorce proceedings have been "reopened" with the filing of the "Application to Vacate Decree of Divorce," but that to date, the "proceedings have not been concluded." We do not find that such facts overcome the director's findings. Although an Application to Vacate Decree of Divorce has been filed with the court, there is no evidence that the court has taken any action. Thus, the judgment for divorce remains in effect. Accordingly, the petitioner is unable to establish that she was married to her citizen spouse within the two-year period prior to the filing of the petition.

The next issue is whether the petitioner has established that she resided with her spouse. On the Form I-360, the petitioner claims to have resided with her spouse from May 2000 until an unspecified date in 2001 at [REDACTED] Fort Smith, Arizona. In her statement, the petitioner claims that in December 2000, [REDACTED] the petitioner's ex-husband (and brother of her citizen spouse), joined her in America and they "were living with [her citizen spouse] and his family." After an incident in which the petitioner was beaten by her citizen spouse's girlfriend, [REDACTED] the family decided to send the petitioner and [REDACTED] "out of the house." The petitioner states that she and her ex-husband shared a home with another brother of [REDACTED] and [REDACTED] until [REDACTED] "co-signed in a house for [REDACTED] and we moved out of there to live on our own."

The petitioner submits a copy of a police report as evidence that she resided with [REDACTED]. The petitioner's representative indicates that the petitioner was hiding in the corner when the police came as a result of this incident. However, the police report does not mention the petitioner much less list her as a resident with her spouse at the claimed address. Further, the fact that petitioner paid for her citizen spouse's insurance does not demonstrate that they resided together. Similarly, the employment letter from O.K. Foods does not contain any information about the petitioner's marital status or residence. It is noted that the **petitioner's 2001 Form W-2, Wage and Tax Statement**, contained in the record lists the petitioner's address as [REDACTED] Fort Smith, Arizona. The petitioner submits no bills, statements, or other documents which show that the petitioner and [REDACTED] jointly resided at [REDACTED].

The next issue is whether the petitioner has established that she was battered by or subjected to extreme cruelty by her citizen spouse. The statute is clear in that in order to establish eligibility, a petitioner must establish that she was battered by or subjected to extreme cruelty by her citizen spouse. Thus, although the petitioner claims that she was mistreated and physically abused by her spouse's girlfriend and her ex-husband, such claims have no bearing on whether the petitioner was abused by her citizen spouse, [REDACTED]. The petitioner makes no claims that she was ever battered by or subjected to extreme cruelty by [REDACTED] or that he was even present during the times the petitioner claims she was abused by [REDACTED] girlfriend and the petitioner's ex-husband. As noted previously, the incident report contained in the record from the Ft. Smith police department does not mention the petitioner or any abuse at all. Although the record contains a letter from the [REDACTED] for Women, the letter indicates that petitioner sought services and spoke to a victim advocate regarding domestic violence and her legal status. The letter does not provide any evidence that the petitioner was battered by or subjected to extreme cruelty by [REDACTED].

The final issue is whether the petitioner entered into the marriage in good faith. In her initial statement, the petitioner offers no details regarding how she met her citizen spouse, how long they dated prior to their marriage, or her feelings at the time of the marriage to demonstrate that she entered into the marriage in good faith. Although the petitioner provides more specific details in her second statement, the details do not show that the petitioner entered into her marriage in good faith. Specifically, the petitioner states the following:

In 1995 [REDACTED] and [REDACTED] [REDACTED]'s girlfriend] came to [REDACTED] . . . and expressed their desire to sponsor his brother [REDACTED] (my husband) to come to America. I and our son [REDACTED] born 1992 were to stay behind in Vietnam for the meantime. I will come to the US later. His brother came and told [REDACTED] that if he wanted to come to America he will leave me and our son behind. I did not want to divorce my husband because he will forget about us and not help us. Under the influence of his brother, he could be capable of doing anything.

As I did not accept the proposed plan, they saw that their plan was not going the way they wanted it so they told me that I had to divorce my husband if I wanted to stay with him . . . [REDACTED] said you have to divorce him and once divorced I will marry you . . . [REDACTED] will marry me and [REDACTED] will marry [REDACTED]

I did not want to divorce [REDACTED] I married [REDACTED] because I love him. I was married to [REDACTED] and he was my husband and the father of my son. I loved [REDACTED] very deeply . . . [and] knew I will lose [REDACTED] if I let him come to America without us. He will leave us behind and never think of us again. I know his brother has a lot of influence on [REDACTED] and I was sure this would happen.

We were to get married and process the engagement papers, me [REDACTED] with his brother [REDACTED] and [REDACTED] and [REDACTED]. They told me once in America and married to [REDACTED] could get a job and earn some money . . . I was going to work, help my family back in Vietnam and I will be with my beloved husband.

Based upon the petitioner's own admission, she married her citizen spouse, not out of love or a shared genuine relationship, but rather so that she would not lose the spouse that she loved "deeply." Accordingly,

we agree with the determination of the director that the record is insufficient to support a finding that the petitioner entered into her marriage in good faith. The petitioner's representative's claim that the petitioner was "forced" into marriage and that she was the "victim of marriage fraud" and "marriage under duress" is contradicted by the fact that it was the petitioner, not her ex-spouse, and not [REDACTED] who personally appeared before a consular officer and claimed that she was not previously married and had no children. Moreover, in the documents the petitioner submitted to support her immigration to the United States, it was the petitioner who signed the documents and swore, under the penalty of perjury, that she was not previously married and had no children. It is important to note that these documents were written in both Vietnamese and English. Thus, the representative's claim the petitioner was duped in part, because of her lack of English ability, is without merit.

Beyond the decision of the director, we find that the lack of evidence of a good faith marriage combined with the petitioner's statement included above, warrants a finding that the petitioner entered into her marriage to circumvent the immigration laws. Section 204(c) of the Act, provides, in part:

[N]o petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws....

The regulation at 8 C.F.R. § 204.2(a)(1)(ii) provides, in part:

Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

Although the petitioner claims that she was ignorant of the immigration laws and "forced" to divorce [REDACTED] and go along with her citizen spouse's plan, as noted previously in this decision, the petitioner both testified and signed, under penalty of perjury, several documents misrepresenting her marital status.

Based upon a review the record before the director at the time of his decision, we concur with the director's findings and in addition, find that the petitioner is subject to Section 204(c) of the Act. The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.