

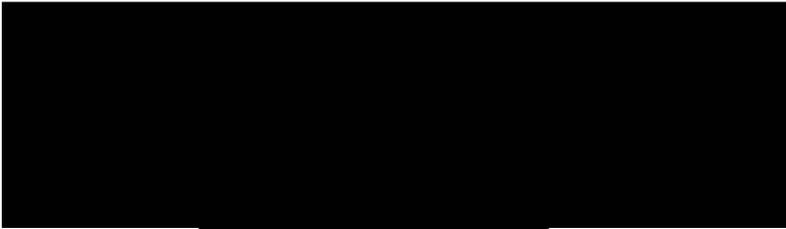
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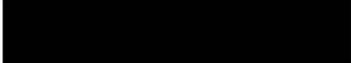
**U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: *MAR 27 2006*

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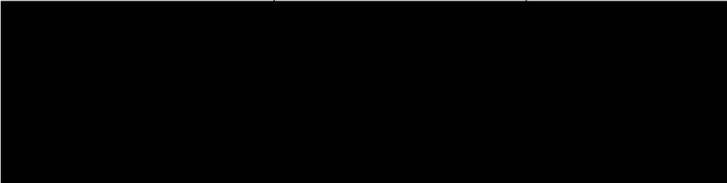
IN RE:

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.

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Colombia 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. The petitioner filed her Form I-360 on December 3, 2004.

The petitioner submitted the following evidence: a marriage certificate, her citizen spouse's birth certificate, copies of several pages of her passport, her employment authorization card, her social security card, a copy of one page of her son's passport and his social security card.

Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, on April 21, 2005, the director issued a notice requesting the petitioner to submit evidence that she resided with her spouse, married her spouse in good faith, and that her spouse subjected her to abuse and/or extreme cruelty. On June 2, 2005, the petitioner responded to the request for additional evidence (RFE).

In a second RFE, the director requested the petitioner to submit evidence that she is a person of good moral character, and that she married the alleged abuser in good faith. The petitioner responded to the request and submitted additional evidence.

On June 21, 2005, the director denied the petition because the record failed to establish that the petitioner has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a statement and additional evidence.

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 or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General 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.

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.

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

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.

According to the evidence on the record, the petitioner entered the United States on February 12, 2001 as a B-2 nonimmigrant visitor at Miami, Florida. She wed United States citizen [REDACTED] on June 28, 2002 in Englewood, New Jersey.

The first issue to be addressed in this proceeding is whether the petitioner established that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that she has been abused by, or the subject of extreme cruelty perpetrated by her citizen spouse, the director asked her to submit additional evidence on April 21, 2005. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. The petitioner responded to the request by submitting her own statement and a letter from a therapist. The letter from the therapist states that she “had the opportunity to speak with [the petitioner] several times about her personal goals and professional future.” The letter says nothing about abuse. In her statement, the petitioner says that she and her husband argued about his coming home late. She discovered he was a drug addict and he ended up in a rehab facility. She said that they never lived together again after he went to the drug rehab facility. The petitioner submitted three letters. The first letter, written by [REDACTED] said that she witnessed “all the suffering and depression that [their] relationship caused to her.” The letter fails to state with specificity what conduct caused the suffering and depression. The letter fails to state that she saw the petitioner and her spouse firsthand. In an affidavit written by [REDACTED] a friend, Ms. [REDACTED] said that the petitioner’s spouse “was always irritated and in a bad mood, he argued for little things that had no merit.” The conduct described does not rise to the level of abuse or extreme cruelty. A landlord’s affidavit indicates that the petitioner’s spouse “created a nuisance on many occasions by yelling and threatening his wife, he was abusive and disrespectful.” The letter lacks specific details; hence it will be given little weight.

In her initial statement, the petitioner indicated that she and her husband argued and that he was a drug addict. In response to an RFE, the petitioner submitted a second statement in which she said that two months into their marriage, her husband’s behavior became “obnoxious and brutish.” She said that he was verbally and sexually abusive. It is difficult to reconcile the petitioner’s initial statement with the latter. The evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse.

The next issue to be addressed in this proceeding is whether the petitioner established that she entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. In response to the RFE, the petitioner provided Citizenship and

Immigration Services (CIS) with photographs, a greeting card congratulating the recipients for their marriage, documentation in the form of joint bank statements, utility bills and several cancelled checks. The documentation is all dated 2004 or 2005, at least two years after the petitioner indicated that she quit residing with her spouse. The petitioner submitted two of her own statements. The statements provide scant detail about her courtship and married life. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

We concur with the director's determination that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage and that she entered into the marriage in good faith. Counsel's claims and the evidence submitted do not overcome this basis for denial and the petition may not be approved. However, the case will be remanded because the director failed to issue a Notice of Intent to Deny (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.

In this case, the director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of an 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/her case.

On remand, the director should also consider whether the petitioner established that she resided with her spouse as is required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(D). According to the evidence on the record, the petitioner and her spouse signed a lease dated December 1, 2002. However, the evidence also indicates that the petitioner's spouse was admitted to a drug rehabilitation facility on November 25, 2002 for an 18-month program.

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 petitioner and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always in these proceedings, the burden of proof rests solely 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.