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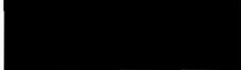
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 28 2006

EAC 02 197 53399

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.

Σ 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 31-year old native and citizen of the Dominican Republic 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.

On March 4, 2004, the director denied the petition because the record failed to establish that the petitioner was married to a citizen or lawful permanent resident of the United States, that she was eligible for immigrant classification based on that relationship, had resided with the U.S. citizen spouse, had 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. The petitioner submitted a petition for an order for protection, and a temporary order for protection against her spouse. She also submitted a five-paragraph affidavit dated March 29, 2004, stating that her husband continues to abuse her. She asserts that she married her husband in good faith and that she lacks documentation because her husband took most of her personal documents when he left the household. She asserted that the director erred by stating the petitioner was living with her former spouse.

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 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 wed her first husband, [REDACTED] in February 1997 and divorced on June 28, 1997 in the Dominican Republic. The petitioner wed Jose

Feliciano, Jr. on January 13, 1999 in the Bronx, New York. She filed the instant petition on May 20, 2002.

The first issue to be addressed in this proceeding is whether the petitioner established that she is married to a U.S. citizen as she claims. The evidence is as follows: the petitioner's marriage certificate indicating that her husband, [REDACTED] was born in the Bronx. The evidence is insufficient to establish that the petitioner is wed to a U.S. citizen. In a request for additional evidence (RFE), the director listed the types of evidence that the petitioner could submit to establish that her husband was a citizen or lawful permanent resident. In response to the RFE, the petitioner provided the director with her husband's full name and date of birth but failed to state his place of birth or provide evidence of his U.S. citizenship. Counsel failed to address this issue on appeal. The evidence is insufficient to establish that the petitioner is married to a U.S. citizen.

The second issue to be addressed in this proceeding is whether the petitioner established that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. The petitioner established that she wed [REDACTED] but without more, the evidence is insufficient to establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. Counsel failed to address this issue on appeal. The evidence is insufficient to establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

The third issue to be addressed in this proceeding is whether the petitioner established that she resided with the citizen spouse as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(D). Initially, the petitioner indicated on the Form I-360 that she resided with her citizen spouse from January of 1999 until July of 2001. She submitted a collection agency letter addressed to her husband alone at 2320 [REDACTED]. She provided Citizenship and Immigration Services (CIS) with copies of her individual tax returns showing her address as [REDACTED] New York. In an RFE, the director listed evidence the petitioner could submit to establish that she had resided with her citizen spouse, such as joint leases, mortgages or rental agreements, insurance policies listing a common address for the petitioner and her spouse, utility bills listing a common address, bank statements, tax records and financial documents listing a common address and affidavits of friends and family who could verify that she had resided with her spouse. In response to the RFE, the petitioner failed to submit any evidence relating to this issue. On appeal, the petitioner submitted her own statement asserting that she had not been living with her first and former spouse and that she lacked documentation because her citizen spouse took her records. The evidence is insufficient to establish that she resided with the citizen spouse.

The fourth issue to be addressed 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 October 16, 2002. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. The petitioner, through counsel, requested an additional 60 days to respond to the notice and on January 15, 2003, submitted additional evidence.

The evidence relating to abuse consists of the following: the petitioner's statement, two petitions for orders for protection and two temporary restraining orders against the citizen spouse and an evaluation performed by an MSW on November 30, 2002, based upon one session with the petitioner. The evaluation did not cite any specific abusive behavior by Mr. [REDACTED]. The petitioner did not submit a statement until on appeal at which time she asserted that her husband continued to abuse her. The petitioner's failed to provide sufficient details about the alleged abuse. It is noted that she failed to obtain permanent orders of protection or police reports. The evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse. Accordingly, the petitioner has not established that she has been battered by, or subjected to extreme cruelty by, her U.S. citizen spouse.

The next issue to be addressed in this proceeding is whether the petitioner established that she had 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. The petitioner provided Citizenship and Immigration Services (CIS) with her own statement. She asserted that a child was born of the marriage. She submitted the child's birth certificate. The birth certificate does not indicate its father's name. The petitioner stated on appeal that his name is not on the birth certificate because "he wasn't there." The petitioner submitted photographs of herself and the citizen spouse. 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 is eligible for the classification sought. 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 her case.

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.