

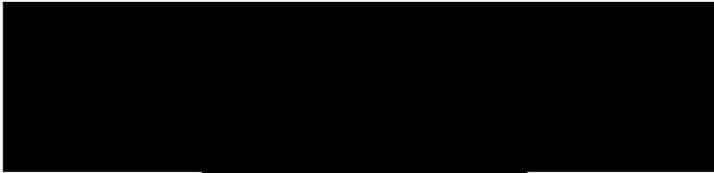


U.S. Citizenship  
and Immigration  
Services

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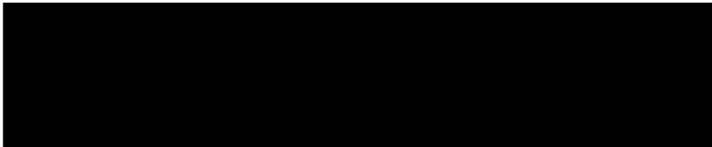


FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: MAR 29 2006  
EAC 04 119 53072

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. The petitioner filed a motion to reopen with the director. The director granted the motion and reaffirmed his prior decision. 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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.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 seeks 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 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 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)(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.

The petitioner is a 32-year old female native and citizen of Brazil. The evidence in the record reflects that the petitioner entered the United States on July 24, 1996 as a B-2 nonimmigrant visitor and married U.S. citizen [REDACTED] on October 20, 2001 in Iowa City. On June 25, 2002, the petitioner's spouse filed a Form I-130 petition in the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status. The Form I-130 petition and Form I-

485 application were denied on July 2, 2003. The petitioner was placed in removal proceedings on January 4, 2006. The petitioner has an immigration court hearing on July 21, 2006.

The petitioner filed the instant Form I-360 self-petition on March 12, 2004, 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. With the initial filing, the petitioner submitted the following evidence: her statement and birth certificate, her citizen husband's birth certificate and criminal record, their marriage certificate, two photographs and a lease. Finding the evidence insufficient, on November 22, 2004, the director requested further evidence, to include evidence that the petitioner had been battered by or subjected to extreme cruelty by her spouse, evidence of the petitioner's good moral character, and evidence that the petitioner married her spouse in good faith.

The petitioner failed to respond to the director's request for additional evidence. On March 22, 2005, the director denied the Form I-360 petition, stating that a determination as to her eligibility could not be made. On appeal, counsel for the petitioner states she needs 60 days to submit a brief. More than seven months have lapsed and nothing more has been submitted to the record.

On motion, the director reaffirmed his prior decision, finding that the evidence was not sufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her spouse, that she is a person of good moral character, and that she entered into the marriage in good faith.

The first issue to be addressed in this proceeding is whether the petitioner established that she was battered by or subjected to extreme cruelty by her spouse. The petitioner submitted medical records indicating that she was treated for situational depression in October and November 2002. The medical records do not link the petitioner's husband's treatment to her mental health. The petitioner submitted evidence of her husband's criminal record. The record does not indicate that he was ever arrested for domestic abuse.

In an affidavit, the petitioner stated that her husband refused to work, threatened to have her deported, demanded sex, put her down, infrequently visited her while she was in jail and eventually abandoned her. She further indicated that she did not know about her husband's extensive criminal history until after they married. She said that she had known that he had a drug and alcohol problem. The petitioner's statement failed to provide sufficient detail to establish that she was abused by her spouse. In any event, much of the conduct she describes - such as refusing to work or visit and abandonment - do not rise to the level of extreme cruelty. The petitioner submitted a letter written by [REDACTED] and [REDACTED] which states that the petitioner's husband "abandoned her completely." The letter does not indicate that the authors had first-hand knowledge of how the petitioner's spouse treated the petitioner. Further, the letter states that the petitioner spent five months in jail. According to the petitioner's criminal record, she was sentenced to only 90 days. This serious discrepancy calls into question the credibility of the letter writers. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582,

591 (BIA 1988). The petitioner submitted another letter, written by [REDACTED] which states that the petitioner attempted suicide while in jail due to the torment inflicted by her husband. The author did not have first-hand knowledge of the spouse's alleged abuse. Given the lack of detail and firsthand knowledge in the letters and the discrepancies noted, we concur with the finding that the record did not establish that the petitioner was battered by or subjected to extreme cruelty by her spouse.

The second issue to be addressed in this proceeding is whether the petitioner established that she is a person of good moral character. The petitioner provided Citizenship and Immigration Services (CIS) with court documents regarding the petitioner's arrest for fraudulent practices in the fourth degree. (Case No. [REDACTED]) The court documents indicate that she pled guilty on June 10, 2002 to the charge, was sentenced to serve 90 days and pay a fine. In a request for additional evidence (RFE) on November 22, 2004, the director requested that the petitioner submit her own affidavit supported by police clearances from each place she had resided for at least six months during the 3-year period before filing the petition. The director also asked for relevant excerpts of law showing the maximum possible penalty for each charge. The petitioner submitted court documents showing the final disposition of her arrest, but she failed to submit the requested arrest report or the relevant excerpts of law showing the maximum possible penalty for the charge.<sup>1</sup> She failed to submit an affidavit. Failure to submit requested evidence will result in a decision based on the evidence previously submitted. 8 C.F.R. § 204.1(h).

No further evidence regarding the petitioner's good moral character has been submitted on appeal. The petitioner failed to establish that she is a person of good moral character.

The third issue to be addressed in this proceeding is whether the petitioner established that she entered into the marriage in good faith. The director noted that while a marriage certificate is evidence that a legal marriage occurred, it is not sufficient evidence to establish that the petitioner entered into the marriage in good faith. The director also noted the photographs provided by the petitioner are not evidence to support her claim of a good faith marriage. The director again noted the letters submitted in support of the petition and stated that they were not sufficient to support the petitioner's claims. The petitioner provided scant detail about her courtship and marriage. The evidence is insufficient to establish that she entered into her marriage in good faith. No further evidence related to the petitioner's claim of a good faith marriage was submitted on appeal.

Based upon the above discussion, we find the director properly considered the evidence submitted by the petitioner and that such evidence was afforded the proper weight. It should be noted that CIS has the sole discretion in determining what evidence is credible and the weight to be given the evidence.<sup>2</sup> Accordingly, we concur with the director's findings that the petitioner failed to establish that she has been battered by or the subject of extreme cruelty perpetrated by her citizen spouse, that she is a person

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<sup>1</sup> Relevant excerpts of the law are in the record of proceeding.

<sup>2</sup> See 8 C.F.R. § 204.2(2)(i) which states that the determination of what evidence is credible and the weight to be given that evidence "shall be *within the sole discretion* of the Service." [Emphasis added.]

of good moral character, and that she entered into her marriage in good faith. The petitioner's appellate submission does not overcome the director's stated grounds for denial.

Despite our support of the director's findings, the director's decision cannot stand because of the director's failure to issue a Notice of Intent to Deny (NOID) to the petitioner prior the issuance of the denial.

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 decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a notice of intent to deny as well as a new final decision.<sup>3</sup> 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.

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<sup>3</sup> When issuing the notice of intent to deny, the director should consider all of the evidence contained in the record, including the evidence submitted by the petitioner on appeal.