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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 05 220 50880

Office: VERMONT SERVICE CENTER

Date: NOV 03 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the record did not establish that the petitioner's former husband battered or subjected her to extreme cruelty during their marriage, that she entered into their relationship in good faith and that she was a person of good moral character.

On appeal, counsel submits a brief, additional testimonial evidence and copies of documents previously submitted.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *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, including rape, molestation, incest (if the victim is a minor), or forced prostitution 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 . . ., must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(ix) *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. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *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 abuse 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal

background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case shows the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who states on the Form I-360 that she entered the United States in July 1994. On October 7, 1997, the petitioner married J-D-¹, a U.S. citizen, in Texas. The couple was divorced on August 28, 2003. On August 3, 2005, the petitioner was served with a Notice to Appear (NTA) for removal proceedings charging her as removable pursuant to section 212(a)(6)(A)(i) of the Act as an alien present in the United States without having been admitted or paroled. The petitioner remains in proceedings before the Houston Immigration Court.

On August 1, 2005, the petitioner filed this Form I-360 petition. On November 14, 2005, the director issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty, the petitioner's good faith marriage to her former husband and her good moral character. The petitioner timely responded. On February 3, 2006, the director denied the petition for lack of the requisite battery or extreme cruelty, good faith marriage and good moral character. The petitioner, through counsel, timely appealed.

On appeal, counsel claims that the evidence establishes the petitioner's eligibility and that the director did not properly consider certain testimonial evidence. We concur with the director's determinations and counsel's claims do not overcome the director's grounds for denial. Beyond the director's decision, the record also fails to establish that the petitioner had a qualifying relationship with her former husband and was eligible for immediate relative classification based on such a relationship. Nonetheless, the petition will be remanded because the director denied the case without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

¹ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

The petitioner submitted the following evidence relevant to her claim of battery or extreme cruelty:

- A Mental Health/Psychosocial Evaluation of the petitioner by _____ a licensed clinical social worker;
- Records of the petitioner's medical treatment on April 26, 1998 for an overdose of Advil;
- Affidavit of the petitioner's mother, _____;
- Affidavit of the petitioner's friend, _____;
- Affidavit of the petitioner's acquaintance _____;
- Sworn statement of the petitioner's former father-in-law, _____;
- Sworn statement of the petitioner's friend, _____;
- Sworn statement of the petitioner's former neighbor, _____;
- The petitioner's own sworn statement;

In her evaluation, Ms. _____ states that the petitioner was referred to her by counsel to determine if spousal abuse occurred and to evaluate the petitioner's mental health condition. Ms. _____ reports that she met with the petitioner on April 9 and July 12, 2005. Ms. _____ states that the petitioner explained that after their marriage, her former husband began to yell at her, tell her "bad things," called her names, pushed and shoved her, once dragged her down the hallway by pulling her hair, threatened to hit the petitioner more if she went to the police and humiliated her by demeaning her in front of his friends. Ms. _____ further states that the petitioner related one occasion where her former husband showed the petitioner a film of him and another woman having intimate relations and complained about the petitioner's inadequacy in this regard.

Ms. _____ relates another incident where the petitioner stated that her former husband grabbed her feet, pulled her out of bed, and dragged her by her feet down the hallway, which scratched her arms and legs. Ms. _____ states that the petitioner said that she took pills trying to commit suicide and woke up in the emergency room of a hospital on April 26, 1998. Ms. _____ states that the petitioner was afraid to tell the truth to the doctor because she feared what her former husband would do if he found out that she had reported his actions. Ms. _____ concludes that the petitioner "is still adversely affected by Post-Traumatic Stress Disorder symptoms due to the physical and verbal abuse by her ex-husband." However, Ms. _____ assessment is based on just two meetings of unspecified length with the petitioner conducted five years after the petitioner separated from her former husband and Ms. _____ provides little substantive analysis of the petitioner's condition.

In her own January 11, 2006 statement, the petitioner mentions only one incident discussed by Ms. _____
The petitioner reports:

Once when I was begging him not to go out, he pushed me against the bed and when I got up he dragged me across the carpet by my hair. When he let go, he left the house and told me to shut up about it because no one would believe me because I was just a Mexican. He would threaten me all the time not to say anything because I was just a stupid Mexican. . . . I was very depressed. I came to the point where I wanted to end my life. I never told anyone about what happened because I did not want [my former husband] to get in trouble. He was everything to me. I never told my family about the problems I was having with [him] because they had told me not to marry him in the first place.

The petitioner's medical records show that on April 26, 1998, she was went to the hospital after taking seven Advil pills. The examining physician's notes state that the petitioner "wants to leave husband due to alcoholism – finds that crying, arguing and taking extra pills is not working. Wants discharge. Will stay with a friend and plan to leave husband – is not in fear of D.V. [domestic violence]." The physician's clinical impression is stated as "anxiety reaction." The petitioner's nursing record for this visit shows that the petitioner was released the same day and notes that "Pt's husband here after wife called him to come pick her up."

In her statement, the petitioner explains:

I went to the hospital in 1998 because I was not feeling well. I was completely distraught over the relationship between [my former husband] and I and the Advil didn't help. Then I thought I might have taken too many. The doctor asked me so many questions at the hospital about [my former husband] and what was going on at home, but I couldn't tell him. I didn't want [my former husband] to get into any trouble, so I told him I wanted to divorce him and move out because he was drinking so much. He left me alone after I told them that. [My former husband] picked me up from the hospital when they let me go. He asked me over and over if I had said anything to the doctors about him and continued to threaten me more not to tell anyone.

The petitioner's mother states that she did not know of any problems with the petitioner's marriage until the petitioner separated from her former husband. Her mother states, "I do recall once [the petitioner] having bruises on her arm. When I asked [her] how she had gotten the bruises, she claimed she had fallen. It was not until later that they separated that I knew why she had gotten those bruises." The petitioner's mother provides no further, probative details regarding her daughter's injury.

The affidavits of the petitioner's friends, former father-in-law and neighbors fail to provide substantive details to corroborate the petitioner's claims and are consequently of little probative value. The petitioner's friend, Mr. [REDACTED] reports, "I visited their home often and noticed their immediate discord and conflict once they were married. . . . I never saw any evidence of any physical abuse, but I did notice the mental abuse." Mr. [REDACTED] provides no probative details regarding such mental abuse. Ms. [REDACTED] confirms that the petitioner lived with her for several months after the petitioner left her former husband. She states, "I know that [the petitioner] was quite traumatized and emotionally

upset by the marriage problems and by the failure of the marriage.” Ms. [REDACTED] does not discuss the basis of her knowledge in any substantive detail. The petitioner’s former father-in-law merely states that sometimes he would stay with the former couple and saw them argue about his son going out without the petitioner. Ms. [REDACTED], the petitioner’s friend and former neighbor, states that it was not until the petitioner moved out of the former couple’s house that she mentioned that her former husband hit and pushed her. Ms. [REDACTED] the petitioner’s former neighbor, states that she knew that the petitioner’s former husband mistreated her, but also states that the petitioner never spoke to Ms. [REDACTED] about her marriage. On appeal, the petitioner submits additional statements by Ms. [REDACTED] and Ms. [REDACTED] that provide no additional, probative information.

In her evaluation of the petitioner’s mental health condition, Ms. [REDACTED] cites nine manifestations of the petitioner’s former husband’s alleged abuse. However, the petitioner herself discusses only one incident of her former husband’s alleged abuse in detail. The petitioner’s medical records and the supporting statements indicate that the petitioner was adversely affected by her marriage, but this evidence does not corroborate her claim of battery or extreme cruelty. Accordingly, the present record fails to establish that the petitioner’s former husband battered or subjected the petitioner or her child to extreme cruelty, as specified in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Eligibility for Immediate Relative Classification

Beyond the director’s decision, the present record also fails to establish that the petitioner had a qualifying relationship with her former husband and was eligible for immediate relative classification based on such a relationship. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act allows an alien who has divorced an abusive U.S. citizen to self-petition for immigrant classification if the divorce occurred within the last two years and was connected to the former spouse’s battery or extreme cruelty. As discussed in the preceding section, the petitioner has not established that her former husband battered or subjected her or her child to extreme cruelty during their marriage. Accordingly, even though this petition was filed within two years of her divorce, the petitioner has not demonstrated a qualifying relationship with her former spouse pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. Because the petitioner has not established a qualifying relationship with her former husband pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, she has also failed to demonstrate her eligibility for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Good Faith Entry into Marriage

In her affidavit, the petitioner states that met her husband at the restaurant where she was working and they began dating. She explains, "We got along as best we could even with the English barrier and in 1997 we got married against the wishes of my family." The petitioner states that at first the former couple did not live together because she had not told her family of their marriage, but that her former husband later took her from her brother's home and told her brother that they were married. The petitioner does not further describe the former couple's courtship, wedding or any of their shared experiences, apart from her former husband's alleged abuse.

The petitioner's mother and former father-in-law confirm that the former couple was married and lived together, but they provide no probative details about the petitioner's alleged good faith in entering the marriage. In her January 6, 2006 statement, Ms. [REDACTED] reports, "My husband and I spent time with [the petitioner and her former husband] as couples. We would go out to eat or go watch car races. We also spent time with them at their house." In her January 6, 2006 statement, Ms. [REDACTED] simply confirms that she was the former couple's neighbor and that they lived together as husband and wife. None of these affiants provide any substantive details to support the petitioner's claim and their statements are of little probative value.

The petitioner submitted a joint automobile insurance policy card for her and her former husband and two joint bank account statements. However, these documents are all dated after the petitioner states that she and her former husband separated in December 2000. Consequently, they do not support her claim of entering into the marriage in good faith.

The record further shows that the petitioner gave birth to her daughter on May 1, 2002, while she was still married to her former husband. However, the name of the child's father is not listed on her birth certificate and Ms. [REDACTED] states that the petitioner explained that her former husband is not the child's father.

The petitioner fails to provide a detailed, substantive description of the former couple's courtship, wedding and any of their shared experiences, apart from the alleged abuse. The relevant supporting statements similarly fail to provide probative information and the documentary evidence does not support the petitioner's claim. Accordingly, the present record does not establish that the petitioner entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

As evidence of her good moral character, the petitioner submitted a clearance letter from the City of Houston, Municipal Courts Administration Department. The letter identifies the petitioner as "[REDACTED]" In the RFE, the director requested the petitioner to submit further evidence of her good moral character in her correct name and with all of her aliases. The petitioner submitted no further

evidence as requested. Instead, counsel claimed that the clearance letter was “valid and sufficient evidence” of the petitioner’s good moral character because the letter identified the petitioner by her maiden name, birth date, Texas driver’s license number and social security number. However, the petitioner’s Texas driver’s license and divorce decree both identify her as [REDACTED]. The petitioner’s name is stated as [REDACTED] on her birth certificate, as [REDACTED] on her marriage certificate, as [REDACTED] on her daughter’s birth certificate and her federal income tax statement dated April 1, 2005 and as [REDACTED] on her medical records. Despite this evidence of the petitioner’s use of at least four different versions of her name, neither counsel nor the petitioner explain why local police clearances or state-issued criminal background checks conducted under these names were unavailable or unobtainable, as specified in the regulation at 8 C.F.R. § 204.2(c)(2)(v). The present record thus fails to establish the petitioner’s good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner did not demonstrate her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that Citizenship and Immigration Services (CIS) must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

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 the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.