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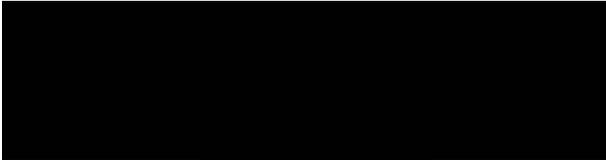
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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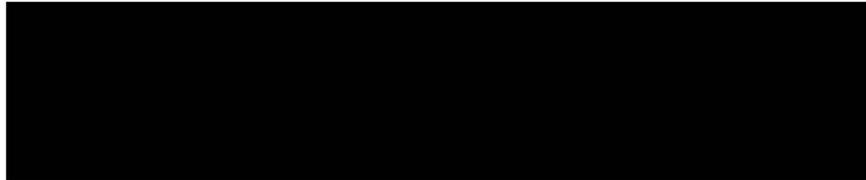
EAC 05 194 52596

Office: VERMONT SERVICE CENTER

Date: NOV 06 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:

SELF-REPRESENTED

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 appeal will be dismissed.

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 petitioner did not establish that her husband battered or subjected her to extreme cruelty, that she married him in good faith, that she resided with him and that she was a person of good moral character.

On appeal, the petitioner submits additional evidence.

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).

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Dominican Republic who entered the United States on March 2, 2003 as a nonimmigrant visitor (B-2). On January 30, 2004, the petitioner married C-D-¹, a U.S. citizen, in Florida. On July 28, 2004, C-D- filed a Form I-130, petition for alien relative, on the petitioner's behalf, but withdrew the petition on April 2, 2005. On June 23, 2005, the petitioner filed the instant Form I-360. On July 7, 2005, the director issued a Request for Evidence (RFE) of the petitioner's residence with her husband, her entry into their marriage in good faith and her good moral character. The petitioner timely responded. On September 27, 2005, the director issued a Notice of Intent to Deny (NOID) the petition for lack of evidence of battery or extreme cruelty, the petitioner's good faith in marrying her husband, their joint residence and her good moral character. Having received no response to the NOID, the director denied the petition on March 7, 2006.

On appeal, the petitioner states that she timely responded to the NOID with additional documents and submits the materials and a copy of a return receipt card indicating that the Vermont Service Center received mail from the petitioner on November 25, 2005. We have considered these documents on appeal, but find that the evidence does not overcome the grounds for denial. Consequently, the appeal will be dismissed.

¹ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

In her written statement notarized on May 12, 2005, the petitioner explains, "I became a sexual object for [my husband's] satisfaction. He no longer has use for me and now he wants to get rid of me." The petitioner provides no further, probative explanation that would indicate that her husband sexually abused her. The petitioner also states her belief that her husband had an extramarital affair and reports that he frequently threatened her with deportation. The petitioner reports that her husband deliberately gave different answers at their immigration interview and claimed that he was pressured by the officer to withdraw his Form I-130 as an excuse to leave her "open for deportation." The petitioner explains that she was reluctant to seek help from authorities because she was afraid of her husband.

In her appellate statement and her November 22, 2005 statement (from her NOID response), the petitioner does not further explain her claim of battery or extreme cruelty. The petitioner states that she cannot sleep well, feels depressed, lonely and helpless, but that she cannot afford medical treatment. On appeal, the petitioner also submits an affidavit from her friend, [REDACTED]. In regards to the petitioner's marriage, Mr. [REDACTED] simply states that he has "been told that there's serious friction in their relationship."

The petitioner submitted no other evidence of battery or extreme cruelty of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The petitioner's own statements and that of Mr. [REDACTED] do not establish that the petitioner's husband battered or subjected her 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.

Good Faith Entry into Marriage and Joint Residence

In her May 12, 2005 statement, the petitioner explains:

When we first met [my husband] made me believe that I was important to him and that he loved me and really wanted to marry me in order to have a home. I was allegedly, the person he had been waiting for a long time to form a home. We dated for a while, and I thought that he really loved me reason why I agreed to marry him [sic].

On appeal, the petitioner states that the former couple's "marital relationship was real and that is known to friends and neighbors," but the petitioner submits a letter from only one friend, Mr. [REDACTED]. Mr. [REDACTED] states, "I was witness of the courtship between [the petitioner and her husband] after they met and I had known their marriage to be in good faith." Yet Mr. [REDACTED] provides no detailed discussion or probative information about the petitioner's good faith entry into her marriage.

On appeal, the petitioner also submits an affidavit from her husband, in which he explains that he withdrew the Form I-130 petition because he "felt pressured and intimidated by the officer" and claims he was told that if he did not withdraw the petition, the petitioner would never be able to return to the United States and he could lose his citizenship. The petitioner's husband further attests, "Our marriage

was never with the sole intention of obtaining a residence visa for [the petitioner]. We married because we wanted to be together; but as result of the stress between us due to this situation, it's currently decomposed [sic] and possibly will end up in divorce.”

On appeal, the petitioner submits a joint automobile insurance policy statement for her and her husband dated February 15, 2005 and an unsigned copy of the former couple's joint 2004 federal income tax return dated February 1, 2005. It is unclear whether these documents were obtained before or after the petitioner separated from her husband. On the Form I-360, the petitioner states that she lived with her husband from January 2004 until February 2005. The petitioner does not further describe how she met her husband, their courtship, wedding, joint residence or any of their shared experiences, apart from her husband's alleged abuse. The petitioner submitted no further evidence of her residence with, and good faith marriage to, her husband of the types listed in the regulation at 8 C.F.R. §§ 204.2(c)(2)(iii), 204.2(c)(2)(vii) and described in the NOID.

The statements of the petitioner, her husband and Mr. [REDACTED] do not describe the petitioner's allegedly joint residence with, and her good faith marriage to, her husband in any probative detail. The petitioner has not established that the joint automobile insurance policy statement and the unsigned, joint tax return were executed before the couple separated and she presents no other documentary evidence of their joint residence and good faith marriage preceding their separation. Accordingly, the present record fails to establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act, and entered into their marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

The petitioner submitted a letter from the Miami-Dade County, Florida Police Department (MDPD) dated August 5, 2005, which states that the petitioner had no arrest record with the MDPD. However, on the Form G-325A, Biographic Information, submitted with the petitioner's Form I-485, the petitioner stated that she began living in Miami-Dade County, Florida in March 2003 and that prior to that time she was living in the Dominican Republic. Although the petitioner was living in the Dominican Republic within the three years preceding the filing of this petition, she did not submit a police clearance, criminal background check, or similar report issued by the appropriate authority in the Dominican Republic, pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). The petitioner also did not explain that such a clearance or check was unavailable or unobtainable and submit other evidence of her good moral character while she was living in the Dominican Republic. Accordingly, the present record 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 failed to establish the requisite battery or extreme cruelty, joint residence, good faith marriage and good moral character. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.