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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 05 180 52369

Office: VERMONT SERVICE CENTER

Date: SEP 01 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Immigration and Nationality Act (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, finding that the petitioner failed to establish that she resided with her U.S. citizen husband, that she entered their marriage in good faith and that he battered or subjected her to extreme cruelty during their marriage.

On appeal, counsel submits a brief and 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 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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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 contained 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.

\* \* \*

(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 petitioner in this case is a native and citizen of Ecuador who entered the United States on May 11, 1993 as a nonimmigrant visitor (B-2). On June 28, 2003, the petitioner married R-R,<sup>1</sup> a U.S. citizen,

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<sup>1</sup> Name withheld to protect individual's identity.

in Margate, Florida. On June 8, 2005, the petitioner filed this Form I-360. On September 6, 2005, the director requested additional evidence of the petitioner's residence with her husband, her good faith marriage to him and his battery or extreme cruelty. The petitioner submitted further evidence on October 14, 2005. On January 3, 2006 the director denied the petition because the record failed to establish the requisite joint residence, good faith marriage and battery or extreme cruelty.

On appeal, counsel asserts that the petition was supported by credible evidence and that the petitioner met her burden of proof by establishing her eligibility by a preponderance of the evidence. We concur with the director's determinations and find that counsel's claims and the additional testimonial evidence submitted on appeal do not overcome the grounds for denial. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

#### *Joint Residence*

On the Form I-360, the petitioner states that she lived with her husband from June 2003 until March 13, 2004 and that their last joint residence was at [REDACTED] in Lake Worth, Florida. In her June 6, 2005 affidavit, the petitioner states that she and her husband rented a room at her friend's house, but she provides no details about their purported joint residence. With the Form I-360, the petitioner also submitted a letter dated May 30, 2005 from her friend [REDACTED] who states that she rented one of her rooms to the former couple.

In response to the director's September 6, 2005 Request for Evidence (RFE), the petitioner submitted a copy of a residential lease dated July 1, 2003 for the [REDACTED] address, which was executed between Ms. [REDACTED] and the petitioner and her husband. As noted by the director, the signature of the petitioner's husband on this lease is markedly different from his signature on other immigration forms in the petitioner's Citizenship and Immigration Services (CIS) file. The petitioner submitted joint bank account statements addressed to her and her husband at the [REDACTED] address, but the statements are all dated after the petitioner's reported date of separation from her husband. The petitioner also submitted nine postmarked envelopes jointly addressed to or from her and her husband, but three of the postmarks are illegible and the remaining six are all dated after the former couple's separation. In her October 10, 2005 statement, the petitioner provides no further details about her purported residence with her husband.

On appeal, the petitioner submits a letter dated January 31, 2006 from Ms. [REDACTED] who states:

[The petitioner and her husband] signed the lease on separate occasions because of their work schedule. They both signed in front of me, and I can attest that [her husband's] signature was his but I don't know why it doesn't match his other signatures. I didn't know of course of this [sic] at the time because I hadn't seen his signature before.

On appeal, the petitioner also submits her own undated statement in which she explains:

Because of our different schedules I was not present when [my husband] signed the lease and I never realized the signatures were different until Immigration mentioned it. I don't know why or what he was thinking. . . . Because we did not have a lot of space w[h]ere we lived, we put stuff in a box (pictures, cards, letters, dry flowers, etc[.]) and put it in the attic; during that hurricane season we had roof leaks all over and that is one of the boxes that got ruined[.]

While the petitioner's appellate statement indicates that she cannot account for the discrepancy in her husband's signatures and explains why she may not have certain evidence of her residence with her husband, her appellate testimony does not state why, for example, the petitioner could not submit evidence of her marital residence from other sources such as bank account, employment or other records of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and specified in the director's RFE. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

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.

*Entry into the Marriage in Good Faith*

In her initial June 6, 2005 affidavit, the petitioner states that she met her husband at an Independence Day party in 2002, that he called her the next day, she went out with him the following week and they began dating. The petitioner describes her husband's proposal and states that they got married the following day at a courthouse. The petitioner explains that the first few months of their marriage were very nice, but then things began to change. The petitioner does not further describe the former couple's courtship, wedding or any of their shared experiences, apart from her husband's alleged abuse.

With her Form I-360, the petitioner also submitted two photographs of the former couple taken on their wedding day and three support letters from her relatives and friend. The photographs show that the petitioner and her husband were together on that day, but they do not independently establish her good faith entry into their marriage. In her May 30, 2005 letter, the petitioner's sister, [REDACTED] states that when the petitioner started dating her husband, Ms [REDACTED] was "very happy to see the way he was treating her. After they got married, we use[d] to get together and BBQ and have a lot of fun. They seem to be a happy couple." In their May 30, 2005 letter, the petitioner's other sister and brother-in-law, [REDACTED] and [REDACTED] similarly state that they double-dated with the petitioner and her husband before and after their marriage and report, "We enjoyed spending time with them, as they were a very fun couple to be around." In her May 30, 2005 letter, Ms [REDACTED] the petitioner's friend and landlord states, "at the beginning everything was fine, they were a nice couple, shared all the expenses and responsibilities, they did everything together[.]"

In response to the director's RFE, the petitioner submitted her second statement, the aforementioned bank statements and envelopes, as well as copies of documents submitted previously. In her October 10, 2005 statement, the petitioner repeats her previous description of meeting her husband, their courtship and wedding, and provides no further details about their relationship and her alleged good faith marriage to her husband. As discussed in the foregoing section, the bank statements and envelopes (with legible postmarks) are all dated after the former couple's separation and do not support the petitioner's claim.

On appeal, the petitioner submits additional testimony from her sisters, brother-in-law and Ms. [REDACTED] who provide further details about the former couple's courtship and marriage based on their observations. As stated in the previous section, the petitioner's own appellate statement explains her lack of personal mementos of her marriage, but does not explain the lack of documentary evidence from other sources such as bank, income tax, insurance or other records of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and specified in the director's RFE. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The petitioner does not specifically discuss, for example, how the short duration of her marriage and her husband's incarceration prevented their accumulation of joint financial, tax, insurance and other records.

The present record does not establish that the petitioner entered into marriage with her U.S. citizen husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Battery or Extreme Cruelty*

In her June 6, 2005 affidavit, the petitioner states that a few months after their marriage, her husband became very distant and quiet, did not want to spend time with her and went out with his friends every night. She reports that if she confronted him, he would use foul language, be very rude, slam the door and sometimes would not come home for a couple of days. The petitioner states that her husband emptied their bank account, complained and insulted her without reason, refused to spend time with her and her family and would not let her go to her sister's house to celebrate Christmas or her sister's birthday. The petitioner explains that her husband's behavior worsened and their landlord asked them to move. She states that her husband left her alone on Valentine's Day and that the next day she found a bag of marijuana in the pocket of his pants. When she confronted him, she states that they had a huge fight and he left. The petitioner reports that they reconciled, but that he subsequently did not come home for three days and her mother-in-law told her that he was in jail. The petitioner explains that she then found out that her husband had been arrested for burglary and marijuana possession with intent to distribute. The petitioner reports feeling depressed, miserable, worthless, trapped, disappointed and sad as a result of her husband's behavior and she states that she almost lost her job.

In their initial support letters dated May 30, 2005, the petitioner's sisters, brother-in-law and Ms. [REDACTED] all confirm that the petitioner's husband's behavior changed after their marriage, but provide no substantive details regarding the alleged abuse or its effects on the petitioner as observed by them.

The documents submitted regarding the criminal record of the petitioner's husband also fail to support her claim. The documents show that the petitioner's husband was convicted of burglary and possession of marijuana on April 26, 2004 as a result of his arrest on March 13, 2004. The records do not indicate that the petitioner was in any way involved in this incident. The petitioner also submitted a document dated November 12, 2002, which states that misdemeanor charges were filed against her husband for "aggravated assault, domestic," but that the Florida State Attorney's office has no file for this case. The petitioner does not state that her husband was ever arrested or charged with assault against her and the record is devoid of any other evidence that the November 12, 2002 charges involved the petitioner.

In response to the director's RFE, the petitioner submitted her second statement and a psychological evaluation report by Dr. [REDACTED]. In her October 10, 2005 statement the petitioner provides further details of her husband's derogatory language and insults, states that she could not function socially, felt humiliated, began to believe her husband's insults, was scared, and felt devastated and very sad when he would not allow her to spend Christmas with her family. The petitioner also states that when she confronted her husband about the marijuana she found in his pants, he pushed her against the wall and she felt scared to death. The petitioner explains that she did not tell anyone about her husband's abuse because she felt ashamed, did not anyone to hate him, and was afraid of what would happen if he found out that she had told others about his behavior. The petitioner states that she was not able to function normally and was unable to trust others.

In his report, Dr. [REDACTED] describes the petitioner's background and marital relationship as expressed to him by the petitioner on two occasions (June 7 and 10, 2005). In conclusion, Dr. [REDACTED] states:

[The petitioner] has suffered a significant decrease in her self-esteem as a result of the traumatic effects of her marriage. "I feel this big," she stated, indicating about an inch between her thumb and forefinger. She has experienced days so painful that she has wanted to die, although she denied any present suicidal intent or ideation. The client expressed problem separating her individual identity with her marital identity, feeling like she is a failure herself, in addition to her marriage having failed. She still experiences fear when thinking about [her husband], although his being incarcerated reduces her expectation of anything happening between them in the near future. It is clear that her relationship with [her husband] was traumatic for her and that it has had a profound effect on her identity and level of functioning.

In her decision, the director concluded that because Dr. [REDACTED]'s report was based purely on the petitioner's testimony over a year after she and her husband separated, the report lacked sufficient weight to corroborate the petitioner's allegations and to demonstrate her eligibility under this criterion. On appeal, the petitioner submits a letter from Dr. [REDACTED] dated January 30, 2006, in which he explains that based on his clinical experience, people often delay reporting abusive and/or traumatic behavior because "it frequently takes a long time to generate or recognize sufficient reason to justify the psychological pain involved in communicating memories of trauma that typically have long been additionally intensified by self-imposed shame, remorse and blame." Regarding the petitioner, Dr.

█ states, "It was evident, sitting with [the petitioner], that speaking about her past with her husband was quite a painful experience for her. I can well understand why she would have avoided doing so for a significant period of time."

Dr. █ credibly explains that the delay in the petitioner's psychological evaluation should not negate the legitimacy of her reported marital experiences. Dr. █ confirms that the petitioner suffered a significant decrease in her self-esteem as a result of her **husband's behavior**, which also affected her identity and level of functioning. We have no reason to question Dr. █ professional expertise or his conclusions. The letters of the petitioner's relatives and Ms. █ submitted on appeal also confirm that the petitioner was greatly affected by her husband's maltreatment. However, their testimony and Dr. █ report and letter do not establish that the petitioner's husband battered or subjected her to extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

In her October 10, 2005 statement, the petitioner reports that her husband pushed her against the wall after she confronted him about the marijuana she found in his pants. The petitioner reports feeling "scared to death," but does not indicate that her husband threatened her and she does not otherwise explain the basis for her fear. Rather, the petitioner states that she and her husband "had a huge fight and he left on bad terms." As described by the petitioner and Ms. █ other disputes between the petitioner and her husband did not involve his physical assault or threatened violence. The petitioner states that on two specific occasions, her husband refused to let her attend family gatherings and insisted that she stay with him. She does not indicate that her husband ever forcibly detained her or threatened her with violence if she did not obey him. The record does not establish that the non-violent behavior of the petitioner's husband constituted psychological abuse or was part of an overall pattern of violence. See 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the present record fails to demonstrate that the petitioner's husband battered or subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

On appeal, counsel cites two AAO decisions in support of his claims. Pursuant to 8 C.F.R. § 103.4(c), designated and published decisions of the AAO are binding precedent on all CIS employees in the administration of the Act. However, unpublished decisions have no such precedential value. The decisions cited by counsel are not designated or published.

On appeal, counsel also contends that the director's decision was not in accordance with the law because the petitioner met her burden of proof, namely, preponderance of the evidence. To clarify, the burden of proof for a petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act is a preponderance of the evidence and CIS will consider any credible evidence relevant to the petition. 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(ii); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). However, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service." 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(ii).

The present record does not establish the petitioner's 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 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.