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U.S. Citizenship
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FILE:

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Office: VERMONT SERVICE CENTER

Date: SEP 06 2006

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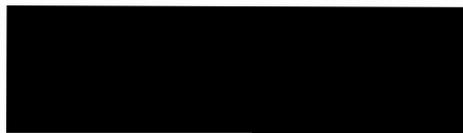
Petitioner:



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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 because the petitioner failed to respond to the director's September 9, 2005 Request for Evidence (RFE) and the director was consequently unable to determine the petitioner's eligibility under any of the statutory criteria.

The petitioner, through counsel, timely appealed.

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 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances

may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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.

(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 petitioner in this case is a native and citizen of Vietnam who entered the United States on June 18, 2002 as the nonimmigrant fiancée (K-1) of T-P-,* a U.S. citizen. On June 27, 2002, the petitioner married T-P- in San Jose, California. On June 27, 2005, the petitioner filed this Form I-

* Name withheld to protect individual's identity.

360 with her June 3, 2005 declaration and copies of her California Manicurist license, Form I-94, Social Security card, identification page of her passport and her U.S. K-1 visa. On September 9, 2005, the director issued an RFE for evidence of the U.S. citizenship of the petitioner's spouse, their marriage, her good-faith entry into their marriage, their joint residence, his battery or extreme cruelty, and the petitioner's good moral character. The petitioner did not respond to the RFE. Accordingly, the director denied the petition on January 24, 2006 pursuant to the regulation at 8 C.F.R. § 204.1(h) because the evidence submitted with the petition did not establish the petitioner's eligibility.

On the Form I-290B Notice of Appeal, counsel did not state the reasons for appeal, but indicated that he would send a brief and/or evidence to the AAO within 30 days. Counsel dated the appeal February 8, 2006. On August 15, 2006, the AAO notified counsel that it had received nothing further and asked counsel to submit any brief and/or evidence submitted within five business days. On August 22, 2006, counsel responded by facsimile and stated that he did not file a brief or evidence in support of the appeal as he indicated on the Form I-290B.

We concur with the director's determination that the present record does not establish the petitioner's eligibility. Although documents in the petitioner's administrative file establish her marriage, her husband's U.S. citizenship and her corresponding eligibility for immediate relative classification, the present record fails to demonstrate the petitioner's eligibility under any of the remaining statutory criteria. Nonetheless, the case 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).

Qualifying Relationship with a U.S. Citizen and Eligibility for Immediate Relative Classification

The petitioner's administrative file contains copies of her husband's U.S. naturalization certificate, his U.S. passport and a certified copy of their marriage certificate. Accordingly, the petitioner has established a qualifying relationship with a U.S. citizen, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act, and her eligibility for immediate relative classification based on that relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Joint Residence

In Part Seven of her Form I-360, the petitioner does not state her husband's name, when she lived with him, or the date and address of their last joint address. In her declaration, the petitioner states that she met her husband in Vietnam, where she agreed to marry him. The petitioner does not indicate that she resided with her husband, then fiancé, in Vietnam. The petitioner states that her husband's behavior started to change "only a week after [she] arrived in the U.S. to live with him." She also refers to their "roommates," but provides no further details regarding her purported residence with her husband. The petitioner also submitted no documentation of her alleged residence with her husband of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii).

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's own testimony provides no substantive or probative description of her residence with her husband. Accordingly, the present record fails to establish that the petitioner resided with her U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Marriage

In her declaration, the petitioner states that her husband's parents and her parents were good friends and they arranged for the former couple to meet and encouraged their relationship. The petitioner explains that her husband visited her and her family in Vietnam and states, "he was very nice-kind and gently [sic] and cared about me, it seemed. . . . [H]e was very nice when he courted me in Vietnam; so, I agreed to become his wife." The petitioner does not further discuss how she met her husband, their courtship, wedding, joint residence or any of their shared experiences, apart from her husband's alleged abuse, in any substantive and probative detail. The petitioner also did not submit any evidence of her good faith marriage of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). While 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's own testimony lacks sufficient, probative detail and does not independently establish her good faith marriage. Accordingly, the present record fails to 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 declaration, the petitioner states, "I come from a small village in rural Vietnam and was raised as a traditional Vietnamese woman. I was taught to be subservient to my husband and do whatever he said. If he struck me, it was because I was bad; not because he was angry or violent." The petitioner states that a week after she arrived in the U.S., her husband:

became very demanding and started treating me as his household servant and sex slave. He beat me and made me do strange sexual acts with him. [I]f I did not do as he wanted, he would discipline me by hitting me and locking me in my room. When I asked to call the police, our roommates told me not to because I would be arrested and deported to Vietnam. I put up with his abuse for approximately a year. . . . I also found out after I came to live with [him] that he was mentally ill and on SSI for his disability. I [f]ear him very much as he is irrational and abusive.

The petitioner does not describe any specific incidents of her husband's alleged battery or extreme cruelty in substantive and probative detail. While she states that she did not call the police because she was told she would be arrested and deported, the petitioner indicates that she confided in friends who told her that she did not have to tolerate her husband's alleged abuse and that she could apply

for special immigrant status. The petitioner did not submit corroborative statements from these friends or provide any other evidence of battery or extreme cruelty of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Although she is not required to do so, the petitioner does not explain why such evidence (apart from police reports) does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The petitioner's statements alone lack probative detail sufficient to establish battery or extreme cruelty. The present record thus 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.

Good Moral Character

In her declaration, the petitioner makes no statement regarding her moral character. The petitioner also failed to submit local police clearances, state criminal background checks or similar evidence of her good moral character as specified in the regulation at 8 C.F.R. § 204.2(c)(2)(v). The present record contains no evidence of the petitioner's good moral character and she has failed to establish her eligibility under this criterion, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The present record does not demonstrate that the petitioner resided with her husband, entered into their marriage in good faith, was battered or subjected to extreme cruelty by her husband during their marriage, or that she is a person of good moral character. She is consequently ineligible 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.