



U.S. Citizenship
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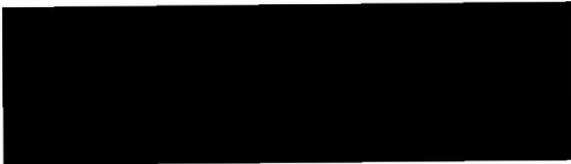


FILE: [REDACTED]
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Office: VERMONT SERVICE CENTER

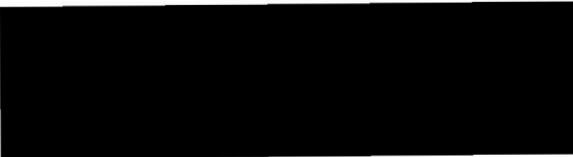
Date: SEP 22 2006

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 preference visa petition was denied by the Acting Director (Director), Vermont Service Center. 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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.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), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a citizen of the United States. The director denied the petition, finding that the petitioner failed to establish that she entered into her marriage in good faith. The petitioner, through counsel, filed a timely appeal.

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 record reflects that petitioner married [REDACTED] a United States citizen, on September 20, 2001 in Gainesville, Florida. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on September 23, 2004. The petition was approved on March 10, 2005. The petitioner filed the instant Form I-360 self-petition on July 18, 2005, 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 her initial submission, the petitioner submitted evidence related to her claim of abuse and a Cox Communications bill in the petitioner's name. After conducting a preliminary review of this evidence, the director found that the petitioner had failed to establish her prima facie eligibility.¹ Accordingly, on July 26, 2005, the director requested the petitioner to submit, inter alia, further evidence to establish that she entered into her marriage in good faith. The petitioner responded to the director's request on August 8, 2005. On September 30, 2005, the director requested further evidence to establish the petitioner's eligibility. The petitioner responded to this request on November 7, 2005.

On January 24, 2006, after reviewing the evidence contained in the record, including the evidence submitted in response to the director's requests, the director denied the petition without the issuance of a notice of intent to deny (NOID) in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii),² finding that the petitioner had failed to establish that she entered into her marriage in good faith.

The petitioner, through counsel, submitted a timely appeal with additional evidence. Upon review, we concur with the director's determination regarding the petitioner's failure to establish that she entered into her marriage in good faith and find that the petitioner's appellate submission is not sufficient to overcome the director's decision.³

¹ The determination of prima facie eligibility is made for the purposes of 8 U.S.C. § 1641, as amended by section 501 of Public Law 104-208. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition, does not establish eligibility for the underlying petition, is not considered evidence in support of the petition, and is not construed to make a determination of the credibility or probative value of any evidence submitted along with that petition.

² 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."

³ It is noted that in instances where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO does not usually accept evidence offered for the first time on appeal. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In this instance, however, because the petitioner was not provided with the NOID required by regulation, we have reviewed the petitioner's appellate submission in order to determine whether such evidence overcomes the director's stated grounds for denial and could be sustained without remanding to the director for further action.

At the time of the director's decision, as it related to whether the petitioner entered into her marriage in good faith, the record contained a bill from Cox Communications in the petitioner's name, a statement from the petitioner and three statements from family members and acquaintances. The bill from Cox Communications is in the petitioner's name only and is dated July 2005, the same month that the petitioner filed the Form I-360. Given the petitioner's claim of a bona fide marriage of nearly five years, this single bill does not carry sufficient weight to establish the petitioner's claim. The remaining evidence, which consists of letters, does not contain sufficient information to make a finding regarding the petitioner's claim of a good faith marriage. For instance, although the letter from [REDACTED] indicates that he has known the petitioner for four years, he does not indicate that he knew the petitioner and her spouse prior to their marriage, that he was present at their marriage or any other details to establish the petitioner's intent at the time of her marriage. Rather, he states that the petitioner has good moral character and that she resided with her spouse. Similarly, while the letters from the petitioner's uncle, M [REDACTED] and [REDACTED], the Home School Liaison for the Anchor School, provide information related to the petitioner's residence with her spouse, they do not provide any information that would establish the petitioner's feelings, emotions or intent at the time she married. Although a petitioner may submit evidence that he or she did, in fact, reside with her spouse, that fact does not de facto establish that they were engaged in a bona fide marital relationship. As previously cited, the provisions contained in section 204(a)(1)(A)(iii) require a petitioner to establish, among other requirements, that the petitioner resided with her spouse *and* that she entered into the marriage in good faith. The clause regarding a good faith marriage would be rendered meaningless if, once a petitioner has established residence with her spouse, she need not also establish that she entered into the marriage in good faith.

The evidence submitted on appeal, which consists of a second statement from the petitioner and from [REDACTED] well as a statement from the petitioner's former landlord [REDACTED] is not sufficient to establish the petitioner's claim of a good faith marriage. While the petitioner provides an explanation for the lack of documentary evidence, the evidence she has submitted to take the place of documentary evidence does not establish that she entered into the marriage in good faith.

In her letter on appeal, the petitioner indicates that she met her spouse while he was employed as a maintenance person at her apartment complex and that they married in September 2001. The petitioner provides no details regarding her courtship with her spouse, including how long they were together prior to their marriage and what their relationship was like during that time. The petitioner also fails to provide any indication as to her reasons for marrying her spouse and her feelings for him at that time. The letters from [REDACTED] and [REDACTED] provide no further information. While both letters indicate that the petitioner and her spouse resided together and "held themselves out as husband and wife," they do not contain any details regarding the petitioner's intent at the time of her marriage. The "key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage." *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975).

In accordance with the above discussion, we concur with findings of the director that the record is insufficient to establish that the petitioner entered into her marriage in good faith. The petitioner has not overcome this finding on appeal. Despite our support of the director's findings, however, the director's decision cannot stand because of the director's failure to issue a NOID to the petitioner prior to the issuance of the denial. Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a NOID

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