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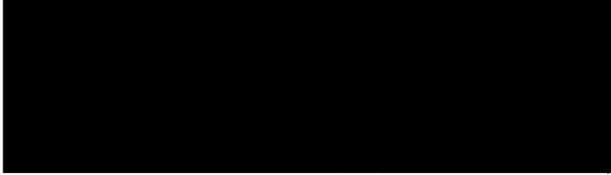
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 02 083 53599

Office: VERMONT SERVICE CENTER

Date: FEB 16 2007

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 failed to establish that the petitioner's husband battered or subjected her or her child to extreme cruelty.

The petitioner timely appealed.¹

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:

(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

¹ The Form I-290B, Notice of Appeal, was signed by [REDACTED], an attorney in New York City. However, Mr. [REDACTED] failed to submit a properly completed Form G-28, Notice of Entry of Appearance as Attorney. Accordingly, we do not recognize Mr. [REDACTED] as the petitioner's counsel.

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.

The evidentiary 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.

* * *

(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.

The petitioner in this case is a native and citizen of Russia who entered the United States on June 8, 2001 as the nonimmigrant fiancée of R-L-², a U.S. citizen, in Omaha, Nebraska. The petitioner married R-L- on August 25, 2001. On January 7, 2002, the petitioner filed this Form I-360. On May 14, 2002, the director issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty. The petitioner submitted additional materials on July 15, 2002. The director denied the petition on January 24, 2006.

On appeal, the petitioner claims that she submitted sufficient proof of her husband's extreme cruelty. On the Form I-290B dated February 16, 2006, the petitioner indicated that she would submit a brief and/or evidence to the AAO within 30 days. To date, over a year later, the AAO has received nothing further from the petitioner. We concur with the director's determination. The petitioner has not submitted a brief or additional evidence on appeal. Nonetheless, the petition will be remanded because

² Name withheld to protect individual's identity.

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).

Battery or Extreme Cruelty

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

- The petitioner's first, undated statement submitted with her Form I-360 and her second, undated statement submitted in response to the RFE;
- A copy of an Omaha, Nebraska Police Department Uniform Crime Report, dated December 7, 2001 which states that the petitioner's passport was missing and that the petitioner informed the officer that she needed a police report in order to obtain a new passport;
- A copy of a Western Union receipt for \$500 that was sent to the petitioner from her mother in Russia on December 11, 2001;
- Medical insurance statements for the petitioner and her daughter from January 2002;
- Letter dated June 6, 2002 from the petitioner's former neighbor, [REDACTED] and
- Printouts of three electronic mail messages dating from January through February 2002 and sent to the petitioner from her husband.

In her statements, the petitioner explains that two months after their marriage, her husband began giving her excuses for his delay in preparing the affidavit of support needed for her application to adjust to permanent resident status. The petitioner states that in November 2001, her husband finally confessed that he was afraid she would leave him after the paperwork was completed. The petitioner reports that her husband refused to take her sick daughter to the doctor in November 2001 and prevented her and her daughter from seeking medical and dental care on other, unspecified occasions. In December 2001, the petitioner states that her husband became very angry when she reminded him about her immigration case and he told her that he did not want her to work and have her own money. The petitioner reports that she then asked her husband to buy airline tickets for her and her daughter to return to Russia, but her husband stopped speaking with her and he did not let her use electronic mail to communicate with her mother in Russia, prevented her from calling her sister in California and forbid her and her daughter from speaking Russian to each other.

The petitioner reports that she enrolled in a local college shortly after her marriage, but her husband later refused to pay her tuition. The petitioner states that her husband also called her derogatory names, refused to let her drive his car, gave her just \$20 a week, confiscated a credit card that he had given her before their marriage and refused to pay for her daughter's lunches at school, forcing her daughter to bring food from home and feel like a "social outcast." The petitioner further states that when looking through her husband's documents, she found six marriage certificates between him and other women, although he had told her that he had only been married three times before.

On December 7, 2001, the petitioner reports that she discovered that her passport was gone and when she called her husband at work and asked him if he knew where it was, he laughed and threatened to

throw her and her daughter out of the house. The petitioner explains that she suspected her husband had taken her passport, but when she asked him to return it, “[h]is reaction was so violent that [she] was forced to call the police as a means of self-protection.” After the police arrived, the petitioner reports that her husband told the police to take her and her daughter out of the house and said that he had filed for her deportation. The petitioner states that the police told her they could not help her because her husband had not hit her; that they advised her to find a place to spend the night; and that they filed a report about her missing passport upon her request. The petitioner reports that after the police left, her husband kicked her and her daughter out of the house without money, papers or warm clothing. She states that he refused to let them use his suitcases, that they had to put their belongings in plastic grocery bags and that as they left her husband shouted that they needed to spend one cold, winter night in the streets in order to learn that they must obey him. The petitioner explains that she and her daughter stayed with the neighbors, [REDACTED] for six days. During this time, the petitioner states that she filed her Form I-360 and Form I-485 with money wired to her by her mother in Russia. The petitioner and her daughter then flew to California to stay with her sister and brother-in-law. The petitioner states that her husband continues to harass her by claiming she is responsible for bills that he incurred on her behalf.

The remaining, relevant evidence does not support the petitioner’s claim. The police report from December 7, 2001 states that the petitioner contacted the police because her passport was missing. The report does not mention the petitioner’s husband and does not indicate that he was involved in the disappearance of her passport. The Western Union receipt confirms that the petitioner’s mother sent her money from Russia, but the money transfer alone does not establish that the petitioner’s husband subjected her or her daughter to extreme cruelty. The insurance statements list claims for medical services provided to the petitioner from September through December 2001 and services provided to the petitioner’s daughter on September 6, 2001. Although they may support the petitioner’s claim that her husband refused to take her daughter to a doctor in November 2001, the insurance statements contradict the petitioner’s claim that her husband prevented her and her daughter from seeking medical attention on other occasions.

Ms. [REDACTED] letter and the electronic mail messages from the petitioner’s husband contradict other statements of the petitioner. Ms. [REDACTED] states that on the night of the December 7, 2001 incident, she saw the police leaving and the petitioner standing alone outside and crying. Contrary to the petitioner’s statement that her husband threw her and her daughter out of his house, Ms. [REDACTED] reports that both the petitioner and her husband asked if she and her daughter could stay at Ms. [REDACTED]’s home. Ms. [REDACTED] states, “She said [her husband] told her she and [her daughter] should stay that night at a motel and he would pay for it. [The petitioner] asked if she could stay with us instead of going to a motel . . . [Her husband] also asked my husband if they could stay overnight with us too.” Ms. [REDACTED] reports that she spoke to the petitioner’s husband who “was very angry” and she states, “[w]ith his state of mind, I was very concerned about their safety.” Yet Ms. [REDACTED] does not discuss the basis of her concern. She does not indicate that she ever witnessed the petitioner’s husband use or threaten to use violence against the petitioner or her daughter.

In his January 27, 2002 message, the petitioner's husband writes that as the former couple's divorce progresses, they will have to come to an agreement about the debts that they incurred and that they have to deal with their 2001 income taxes. He states, "I am agreeable to share any return we may have." This message is the only one of the three messages submitted by the petitioner that mentions their debts and the message does not support the petitioner's claim that her husband continues to "harass" her about the bills incurred during their marriage. In the remaining two messages, the petitioner's husband states that he is aware of her filing a Form I-360 and her claims of abuse and he references documents that he submitted to Citizenship and Immigration Services (CIS) in his defense. Those documents have not been considered in our adjudication of this appeal.

The present record does not demonstrate that the petitioner's husband subjected the petitioner or her child to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The medical insurance statements, Ms. [REDACTED] letter and the electronic mail messages of her husband (submitted by the petitioner) contradict her statements regarding how she and her daughter left her husband's home on December 7, 2001 and contradict the petitioner's claim that he prevented them from obtaining medical care and that he continues to harass her regarding their marital debts. The petitioner's remaining statements fail to establish that her husband subjected her and her daughter to economic or psychological abuse. The petitioner states that on December 7, 2001, her husband's "violent" reaction caused her to call the police for self-protection, but she does not discuss in detail her husband's behavior or explain why she feared for her safety. The petitioner's description of her husband's behavior also fails to establish that he engaged in an overall pattern of violence against her or her daughter. Accordingly, the petitioner has failed to demonstrate that her husband battered or subjected her or her child to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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.