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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



B9

FILE: [REDACTED]
EAC 05 017 52483

Office: VERMONT SERVICE CENTER

Date: MAR 17

IN RE: Petitioner: [REDACTED]

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:



PUBLIC COPY

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 Vermont Service Center Director denied the preference visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the case to the director for the issuance of a notice of intent to deny (NOID) pursuant to the regulations. The director issued a NOID. The petitioner failed to respond to the NOID. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

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 the battered spouse of a United States citizen.

The director initially denied the petition, finding that the petitioner failed to establish that she had been battered or the subject of extreme cruelty perpetrated by her spouse, and that she entered into the marriage in good faith.

The petitioner submitted a timely appeal. On June 9, 2006, the AAO remanded for issuance of a NOID. The director issued a NOID on July 28, 2006, advising the petitioner that the petition was unapprovable because she had failed to establish that she had resided with her spouse during the marriage, that she had been battered or the subject of extreme cruelty perpetrated by her spouse, and that she entered into the marriage in good faith. The applicant failed to respond to the NOID. On December 16, 2006, the director denied the petition and certified her decision to the AAO.

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 regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

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 born in the United States, 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.

According to the evidence in the record, the petitioner entered the United States as a B-2 nonimmigrant visitor on August 29, 1999 at New York, New York. The petitioner married United States citizen F-B-* on April 23, 2001 in Hempstead, New York. The petitioner's spouse filed a

* Name withheld to protect confidentiality.

Form I-130 petition on the petitioner's behalf. The petitioner filed a Form I-485, Application to Adjust Status, concurrently with the Form I-130 on August 11, 2001. On August 10, 2004, the district director denied the Form I-130 petition and Form I-485 application because the petitioner and her spouse failed to appear for a *Stokes* interview in connection with the Form I-130 petition. On September 2, 2004, the petitioner was placed in removal proceedings. Her next immigration hearing is scheduled for March 13, 2007.

The petitioner filed the instant Form I-360 self-petition on October 21, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage. Finding the evidence insufficient to establish eligibility, on April 7, 2005, the director requested further evidence, to include evidence of the petitioner's good moral character, evidence that the petitioner had been battered by or subjected to extreme cruelty by her spouse, and evidence that the petitioner married her spouse in good faith.

The petitioner responded to the director's request on May 30, 2005 and requested an additional 30 days in which to respond to the request. The director granted the petitioner's request for an extension and on September 15, 2005, the petitioner submitted additional evidence.

After reviewing the evidence submitted by the petitioner, the director denied the petition on December 14, 2005, finding that the evidence was not sufficient to establish that the petitioner was battered or subjected to extreme cruelty by her spouse, and that she entered into the marriage in good faith. On June 9, 2006, the AAO remanded for the issuance of a NOID. The director issued a NOID on July 28, 2006. The petitioner failed to respond to the NOID. On certification, the director denied the petition, finding that the petitioner had failed to establish that she had resided with her spouse during the marriage, that she had been battered or the subject of extreme cruelty perpetrated by her spouse, and that she entered into the marriage in good faith.

Upon review of the record, including the petitioner's appellate submission, we find that the evidence contained in the record is not sufficient to establish eligibility.

The first issue to be addressed in this proceeding is whether the petitioner established that she was battered by, or subjected to extreme cruelty by, her spouse. The evidence relating to abuse consists of the following:

- The petitioner's affidavit dated September 9, 2004.
- The statement of [REDACTED]
- The statement of [REDACTED] the petitioner's husband's stepmother.
- The statement of [REDACTED]
- A letter from [REDACTED] Domestic Violence Coordinator, Caribbean Women's Health Association.

In her affidavit, the petitioner stated that around May 2003, her husband grabbed her at the neck and began to choke her. She said that he refused to have sexual relations with her and made her pay all the bills. She said that he made her give him \$1,200.00 and did not give her birthday presents. Withholding sexual relations and gifts are not necessarily tantamount to extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's therapist, [REDACTED] wrote in generalities, e.g., "her husband emotionally, verbally, psychologically, sexually, financially and physically abused her." Similarly, friends of the petitioner submitted statements that included few details. Without any specificity or eyewitness accounts to the petitioner's claims of battery and extreme cruelty and without any corroborating evidence such as police reports or court documents, the petitioner's statement does not carry sufficient weight to establish that she has been battered by, or subjected to extreme cruelty by, her spouse. Accordingly, the petitioner has failed to demonstrate that her spouse battered or subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The next issue to be addressed in this proceeding is whether the petitioner established that she entered into the marriage in good faith. The director noted that while the petitioner submitted bank statements from Chase Bank showing she had a savings account in trust for her husband, the evidence was insufficient to establish that this was a joint account. The director further noted that one letter addressed to the petitioner and her spouse about an error in their 2002 Federal Income Tax return, which suggests that the parties filed a joint return, it is not sufficient evidence to establish that the petitioner entered into the marriage in good faith. The petitioner submitted photographs for the record. While the photographs are evidence that the petitioner and her spouse were together at a particular place and time, they do not establish the petitioner's intent at the time of her marriage or that she resided with his spouse. In the petitioner's statement, she failed to explain her reasons for marrying her spouse and to provide a statement regarding her intent at that time. The record is absent evidence of the commingling of funds and assets, or financial accounts or documentation, which demonstrate a good faith marriage. The present record does not demonstrate that the petitioner entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The last issue to be addressed in this proceeding is whether the petitioner established that she resided with her spouse during the marriage. The petitioner initially indicated that she lived at [REDACTED], Hempstead, New York, on her Form I-485 Application at her adjustment interview. In support of the instant petition, the petitioner submitted a lease dated October 1, 2003, indicating that the petitioner and her spouse rented apartment [REDACTED] located at [REDACTED] Brooklyn, on the second floor. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). This inconsistent evidence, coupled with the petitioner's failure to provide further relevant testimony or documentation, indicates that the petitioner did not reside with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. Accordingly, the petitioner is ineligible for immigrant classification and her petition must be denied.

Based upon the above discussion, we find the director properly considered the evidence submitted by the petitioner and that such evidence was afforded the proper weight. It should be noted that CIS has the sole discretion in determining what evidence is credible and the weight to be given the evidence.¹ Accordingly, we concur with the director's findings that the petitioner failed to establish that she has been battered by, or the subject of extreme cruelty perpetrated by, her citizen spouse, that she resided with her spouse, and that she entered into her marriage in good faith. The petitioner has submitted nothing on certification to challenge the director's findings.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. The petitioner has not met that burden. Accordingly, the AAO affirms the director's decision.

ORDER: The director's decision of December 16, 2006 is affirmed. The petition is denied.

¹ See 8 C.F.R. § 204.2(2)(i) which states that the determination of what evidence is credible and the weight to be given that evidence "shall be *within the sole discretion* of the Service." [Emphasis added.]