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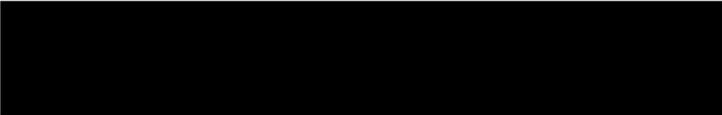
Office: VERMONT SERVICE CENTER

Date: MAR 20 2007

IN RE: Petitioner: [REDACTED]

PETITION: Petition for 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 appeal will be dismissed.

The petitioner seeks immigrant classification under 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 petitioner did not establish that her husband subjected her or her child to battery or extreme cruelty during their marriage and that she entered into their marriage in good faith.

On appeal, counsel submits an additional affidavit of the petitioner.

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 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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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.

* * *

(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 record in this case provides the following facts and procedural history. The petitioner is a native and citizen of China who married M-C-¹, a U.S. citizen, in China on March 23, 2000. The petitioner entered the United States on September 24, 2001 as a conditional lawful permanent resident (CR-1).

¹ Name withheld to protect individual's identity.

On July 23, 2003, the petitioner and her husband jointly filed a Form I-751, petition to remove the conditions on residence, which remains pending at the Los Angeles, California District Office.

The petitioner filed this Form I-360 on December 19, 2005. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character and her husband's battery or extreme cruelty. The petitioner, through former counsel, responded with evidence of the petitioner's good moral character, but requested additional time to submit evidence of battery or extreme cruelty. The director then issued a Notice of Intent to Deny (NOID) the petition on the grounds of battery or extreme cruelty and good-faith entry into the marriage. Neither the petitioner nor her former counsel responded to the NOID. On September 13, 2006, the director denied the petition on the grounds cited in the NOID and the petitioner, through present counsel, timely appealed.

Good Faith Entry into Marriage

The petitioner submitted the following evidence relevant to her alleged good faith entry into marriage with her husband:

- The petitioner's statement dated December 6, 2005 and her October 18, 2006 affidavit submitted on appeal;
- The former couple's joint federal income tax return for 2004;
- A Washington Mutual Bank statement for the former couple's joint checking account for the period of January 6 to February 3, 2005;
- Two Standard Savings Bank statements for the former couple's joint checking account dated January 20, 2005 and October 20, 2004;
- An automobile insurance policy declaration for the petitioner's husband dated December 1, 2004, which lists the petitioner as an excluded driver;
- A letter from [REDACTED] dated July 27, 2005, which states that the petitioner is pregnant with an estimated due date of March 2, 2006; and
- Copies of three photographs of the petitioner and her husband.

The record also contains the following relevant evidence submitted with the petitioner's Form I-751:

- The former couple's joint federal income tax return for 2002, which is unsigned;
- A Washington Mutual Bank statement for the former couple's joint checking account for the period of May 6 to June 4, 2003;
- Three First United Bank statements for the former couple's joint checking account dated November 1 through 30, 2001 and June 1 through 28 and August 1 through 30, 2002;
- An automobile insurance policy declaration for the petitioner's husband dated June 18, 2003, which lists the petitioner as an excluded driver;
- Copies of the petitioner's California identification card and her husband's California driver's license, both issued in 2003 and listing the same residential address; and
- 16 photographs of the petitioner and her husband taken on six different occasions.

In her December 6, 2005 statement, the petitioner explains, "I was so excited and glad to live with my husband before I came here. However, what the life brought me was limitless hurt and affliction." The petitioner states that she became pregnant in May 2005 through her husband, but she does not discuss any other aspects of their marital life, apart from her husband's alleged abuse.

The 2004 joint income tax return, joint bank account statements, automobile insurance policy statements, and California driver's license and identification card show that the petitioner and her husband resided together and shared financial assets and liabilities to some extent. The pictures show that the former couple was photographed together on six, unidentified occasions. However, without a detailed, probative statement of the petitioner describing her courtship, wedding, marriage, marital residence and shared experiences (apart from any abuse), these documents fail to establish that the petitioner entered the marriage in good faith. In the NOID, the director explicitly asked the petitioner to provide "a detailed statement describing in your own words the initial meeting of you and [M-C-], your courtship, your wedding ceremony, memorable experiences in your married life to include the dates and the circumstances which resulted in your separation." The director repeated this statement in his decision denying the petition and noted that the petitioner failed to respond to the NOID.

In her affidavit submitted on appeal, the petitioner states, "My cousin introduced me to my husband, [M-C-] in 1998. We met each other in 1999. We were very happy at that time. We fell in love then we got married in March, 2000." The petitioner does not further describe the former couple's courtship, wedding, shared residence and experiences, apart from her husband's alleged abuse, in any detail. Although the appeal was filed seven months after the petitioner's anticipated due date, the petitioner does not submit a birth certificate for her child stating that she and her husband are the child's parents or submit other evidence of the outcome of her pregnancy. On appeal, the petitioner states that her cousin introduced her to her husband, but she does not submit a supporting statement from her cousin, or any other individuals who witnessed the petitioner's courtship and wedding and can attest to her good-faith entry into her marriage. 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 testimony and the relevant documentary evidence fails to provide a substantive, detailed account of how the petitioner met her husband, their marriage, marital residences and shared experiences, apart from her husband's purported abuse. Consequently, the petitioner has failed to establish that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The petitioner's December 6, 2005 statement and her October 18, 2006 affidavit submitted on appeal are the only documents in the record relevant to her claim of battery or extreme cruelty. In her December 6, 2005 statement, the petitioner reports that her husband cheated her out of her savings and

took the money she earned working and gambled it away. When she tried to persuade him to stop gambling, the petitioner states that her husband beat her. In May 2005, the petitioner reports that she found out that she was pregnant and began saving money, but her husband abused her and threatened to kill her if she did not give him money for gambling. The petitioner states that her husband began asking her friends for money and that when he found out that she had told her friends not to lend him any money, he beat her.

In September 2005, the petitioner states that her husband came home one night and forced her to have intimate relations. When she refused because of her pregnancy and the associated discomfort, the petitioner reports that her husband began to abuse her and slap her face. The petitioner explains that she then moved to a friend's home to escape her husband's abuse. The petitioner reports that after she left him, her husband continued to ask her for money and threatened to stop her "green card" application if she did not comply.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and the director's RFE and NOID. In her affidavit submitted on appeal, the petitioner explains, "When he beat me, I could not call the police because he threatened to kill me and I was too scared to do it." The petitioner further states that she suffered physically and mentally from her husband's abuse, but she "did not have money to see the doctor." However, the petitioner states that her husband asked her friends for money and that she told them not to lend any money to him. She also states that she moved to a friend's house to escape her husband's abuse. The petitioner does not submit supporting statements from any friends who knew of her husband's gambling and its effects on her or from the friend whose home she moved into to escape her husband's abuse. 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 testimony alone fails to provide a sufficiently detailed and probative account of her husband's alleged abuse and the record does not demonstrate that the petitioner's husband subjected her to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that she entered into marriage with her husband in good faith and that her husband subjected her or her child (if any) to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

This dismissal is without prejudice to the filing of a new Form I-360 self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act with the requisite supporting documents and filing fee (or a documented request for a fee waiver); or to the filing of a new Form I-751 with a request

for a hardship waiver pursuant to section 216(c)(4) of the Act and with the requisite supporting documents and filing fee (or a documented request for a fee waiver).

ORDER: The appeal is dismissed.