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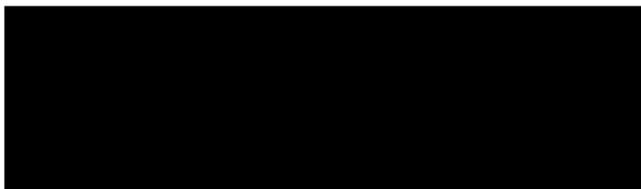
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: MAY 10 2007

EAC 04 078 50171

IN RE:

Petitioner:



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.

Maura Deadrick
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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 immigrant classification 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 and as the parent of a child abused by her citizen spouse.

The director denied the petition because the petitioner failed to establish that she entered into marriage with her husband in good faith and that she resided with him.

On appeal, counsel for the petitioner submits new evidence, as well as copies of documents previously submitted below.

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:

(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.

* * *

(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.

* * *

(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.

* * *

(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 was born in the United Kingdom and is a citizen of Jamaica. On her Form I-485, Application to Adjust Status, the petitioner states that she entered the United States on an unspecified date without inspection.¹ On November 8, 2000, the petitioner married D-M-² a U.S. citizen, in Vermont. The petitioner has four children, who were all born in the United States prior to her marriage to D-M-. The petitioner filed the instant Form I-360 on January 21, 2004. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage and joint residence. The petitioner, through counsel, timely responded with additional evidence. On January 4, 2005, the director denied the petition for lack of the requisite good-faith entry into the marriage and joint residence. Although we concur with the director's determinations, the case must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID), as required by the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Entry into the Marriage in Good Faith

¹ Counsel submitted a copy of the petitioner's Form I-485, which she signed on October 21, 2003. The record indicates that counsel initially filed this Form I-485 with the Form I-360 at the Boston District Office on December 4, 2003. The Boston District Office forwarded the Form I-360 to the Vermont Service Center and returned the Form I-485 to counsel.

² Name withheld to protect individual's identity.

The record contains the following evidence relevant to the petitioner's claim that she entered into marriage with her husband in good faith:

- The petitioner's November 24, 2003 affidavit and the amended version of that affidavit dated December 16, 2004; and
- Certified copies of the criminal docket sheets of the petitioner's husband.

In her November 24, 2003 affidavit, the petitioner attests, "That on November 8, 2000 I married [D-M-] Jr. [T]his was my first marriage and I loved my husband and I was happy to be married to him. That approximately one week after our marriage, my relationship with my husband began to be very difficult." The petitioner does not describe how she met her husband, their courtship, wedding, joint residence or any of their shared experiences, apart from the abuse.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and the RFE. 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). In her amended affidavit, the petitioner states that her husband was convicted on March 29, 2002. The corresponding criminal docket sheet shows that the petitioner's husband was arrested on March 29, 2002 and convicted of three criminal offenses on November 7, 2003 by the Springfield, Massachusetts District Court. These documents may explain the lack of joint documentation after March 29, 2002, but the evidence does not account for the absence of any documentation of the petitioner's good-faith entry into her marriage prior to or during the first 16 months of her marriage.

On appeal, counsel discusses the petitioner's alleged residence with her husband, but does not address the lack of evidence regarding her good-faith entry into her marriage. The petitioner has failed to provide a detailed, probative account of how she met her husband, their courtship, wedding, joint residence or any of their shared experiences, apart from the abuse, and the record contains no documentation to support the petitioner's claim. Accordingly, the petitioner has not demonstrated 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.

Joint Residence

On Part 7(B) of the Form I-360, the petitioner did not state when she lived with her husband or their last joint address. Nonetheless, the record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's marriage certificate;
- The petitioner's Form G-325A, Biographic Information, which she signed on October 21, 2003;
- A letter from the petitioner's landlord dated October 25, 2004 and a subsequent letter dated January 27, 2005 that was submitted on appeal;
- Certified copies of criminal docket sheets of the petitioner's husband arising from his arrests on March 29, 2002 and January 30, 2000; and

- A copy of the cover page of a Service Plan for the petitioner's family by the Massachusetts Department of Social Services.

The October 25, 2004 letter of the petitioner's landlord states that the petitioner and her husband lived together at ' [REDACTED] Springfield, MA 01109 from November 2000 to August 2001.' In her letter submitted on appeal, the petitioner's landlord states that the petitioner, her husband and the petitioner's four children lived at the [REDACTED] residence from November 2000 to August 2001.

However, the petitioner's marriage certificate, dated November 8, 2000, states that the petitioner resided at [REDACTED] in Springfield, Massachusetts, but that her husband resided at a different address. In addition, on her Form G-325A, the petitioner states that she lived at [REDACTED] in Springfield, Massachusetts from 1999 until 2002. The petitioner does not explain the discrepancy in the dates and street number of her [REDACTED] residence as stated on her Form G-325A and in her landlord's letters.

On appeal, counsel claims that the criminal docket sheets of the petitioner's husband show that he resided at [REDACTED]. Although the docket sheets arising from the March 29, 2002 and January 30, 2000 arrests of the petitioner's husband list [REDACTED] as his address, the documents contain no reference to the petitioner and are insufficient to establish that the petitioner resided with her husband at that address.

On appeal, counsel also claims that the Service Plan is evidence of the petitioner's residence with her husband because it references him as a member of the petitioner's household. Although it lists the petitioner's husband as a family member, the Service Plan also lists the fathers of three of the petitioner's children as family members and the document does not indicate that all family members resided together. For example, the document states that the father of the petitioner's two youngest children was granted custody of all of the petitioner's children and that the whereabouts of one of the children's father was unknown. The document also states that the petitioner "remained with" her husband after being informed of his abuse of her children, but provides no further, probative information sufficient to establish that the petitioner resided with her husband.

The petitioner failed to provide the relevant information regarding her residence with her husband on her Form I-360. In her affidavit, the petitioner does not discuss her alleged residence with her husband. The petitioner also fails to explain the discrepancy between the address of her alleged residence with her husband as stated by her landlord and by herself on her Form G-325A. The pertinent criminal docket sheets of the petitioner's husband and the cover page of the Service Plan also fail to establish the petitioner's claim. Accordingly, the petitioner has not demonstrated that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The petitioner has not established that she entered into marriage with her husband in good faith and that she resided with him. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act based on the present record. 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 Citizenship and Immigration Services (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.