



U.S. Citizenship
and Immigration
Services

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B9



FILE: [Redacted]
EAC 05 255 52535

Office: VERMONT SERVICE CENTER

Date: SEP 05

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)

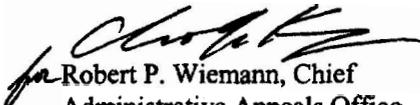
ON BEHALF OF PETITIONER:



PHOTIC 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.


for 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 she resided with her spouse, that her husband subjected her to battery or extreme cruelty during their marriage, that she entered into their marriage in good faith, and because section 204(g) of the Act barred approval of the petition.

The petitioner, through counsel, submits a timely appeal.

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.

(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 . . . spouse, 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.

* * *

(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.

(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 pertinent facts and procedural history. The petitioner is a native and citizen of the Dominican Republic who entered the United States on December 8, 1991 without inspection. The petitioner was placed in proceedings on that date and was subsequently ordered deported on February 19, 1992. The record contains no evidence that the petitioner left the United States in compliance with the deportation order. On February 12, 1997, the petitioner married I-F-¹, a U.S. citizen, in New York, during the pendency of her deportation proceedings. See 8 C.F.R. § 245.1(c)(8)(ii).

I-F- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on January 23, 2001. The petitioner filed this Form I-360 on September 22, 2005. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty, residence, and good-faith entry into the marriage. The petitioner requested an extension of time to respond to the director's RFE on September 5, 2006. On October 19, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite battery or extreme cruelty, good-faith entry into the marriage and joint residence. The petitioner, through counsel, responded to the NOID with additional evidence on December 8, 2006. The director issued a second NOID on February 8, 2007, citing the same grounds noted in the initial NOID and, in addition, requested the petitioner to resolve inconsistencies regarding her date of birth and her child's name as well as provide clear and convincing evidence in accordance with section 204(g) of the Act that the petitioner entered into her marriage in good faith. The director denied the petition on May 3, 2007 on the grounds cited in the February 8, 2007 NOID and counsel timely appealed.

On appeal, counsel claims that the petitioner met her burden of proof and that the director did not properly consider the documentary evidence contained in the record. As discussed below, counsel's claims on appeal fail to overcome the grounds for denial.

Joint Residence

On the Form I-360, the petitioner indicated that she resided with her spouse from February 1997 until August 2005 and that she last resided with him at [REDACTED]

[REDACTED] In her November 30, 2006 statement, the petitioner indicates that in addition to the above cited address, the petitioner and her spouse also resided at three other

¹ Name withheld to protect individual's identity.

addresses in New York, to include [REDACTED] and [REDACTED]. However, the petitioner fails to provide the dates in which they resided at each address and fails to provide any details regarding their joint residence at each location. While the petitioner submitted documentary evidence including utility bills, tax information, and bank statements, as stated by the director in his decision, the evidence shows contradictory and “extensive overlapping of dates at different addresses.” On appeal, the petitioner fails to provide any clarification for the overlapping dates and or any explanation for the contradictory evidence. Counsel’s general statement that the petitioner “provided sufficient documentary evidence that she resided with her husband” is not sufficient to overcome the discrepancies noted by the director and to establish that the petitioner resided with her spouse as claimed.

As discussed above, the record contains no detailed statement from the petitioner to establish the dates she purportedly resided with her spouse, or other probative information regarding her residences with her husband. The record contains only documents with inconsistent information regarding the petitioner’s and her spouse’s purported residences. Accordingly, the petitioner has failed to establish that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

With the initial filing, the petitioner submitted an assessment from [REDACTED] a psychotherapist. In her assessment, [REDACTED] indicates that the petitioner’s spouse took money from the petitioner’s bank account, that he threatened to call immigration if the petitioner did not pay his credit card bills, and may have withheld the petitioner’s mail. While [REDACTED] also generally indicates that the petitioner’s spouse was verbally abusive and “threatening when speaking” with the petitioner, she does not describe any particular incident in probative detail.

In response to the director’s first NOID the petitioner submitted a personal statement in which she describes two incidents where she and her spouse were arguing about money which escalated into her spouse calling her names and threatening to call immigration. The petitioner also submitted assessments from subsequent visits to Irene Torres in which Ms. [REDACTED] describes the petitioner’s “continued difficulty in coping with . . . stressors” such as her spouse’s continued pressure for a divorce, threats to report her to immigration, threats to file tax returns without the petitioner and to take her money, and infidelity. We note that the petitioner’s statement does not make any reference to her spouse’s infidelity or threats regarding the petitioner’s tax returns.

In response to the director’s second NOID, the petitioner submitted a “psychiatric summary” prepared by [REDACTED]. [REDACTED] summary does not refer to any abuse but indicates only that the petitioner suffers from a “long history of depression, anxiety and insomnia” and that “her immigration is weighing heavily on her condition.”

The general claims made in the testimonial evidence that over the course of her 8 year

marriage the petitioner's spouse called her names and purportedly threatened to call immigration on two occasions is not sufficient to establish that the petitioner was the victim of any physical act or threatened act of violence, that her spouse's nonviolent actions were part of an overall pattern of violence or that his behavior rose to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. We note that although [REDACTED] indicates that the petitioner's daughter is "fearful" of the petitioner's spouse, neither the petitioner nor [REDACTED] provides any evidence regarding abuse perpetrated against the petitioner's child by the petitioner's spouse. Accordingly, the petitioner has failed to establish that she or her child was battered by or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

As testimonial evidence of her good faith entry into marriage, the petitioner states that she met her spouse at a subway station in Manhattan, fell in love, and was engaged for eight months prior to her marriage. The petitioner provides no probative testimony regarding her courtship with her spouse, their wedding, or any of their shared experiences, apart from her husband's alleged abuse. The petitioner also fails to provide any testimonial evidence from friends or relatives regarding her marriage and good faith intent. Although she is not required to do so, the petitioner does not explain why such testimony is not available or unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The relevant documentary evidence also fails to establish the petitioner's good-faith entry into the marriage. While the petitioner submitted copies of utility statements and bank statements, as previously discussed, the documentation is not consistent and casts doubt on the petitioner's claims. In addition to the discrepancies noted by the director in his decision regarding the petitioner's documentary evidence, the director also specifically addressed the petitioner's evidence and provided a lengthy discussion explaining why the evidence was not sufficient to establish the petitioner's claim of a good faith marriage. As it relates to the petitioner's spouse's life insurance policy, the director indicated that there was evidence indicating that the policy was not "validated and in force" and that the premium for the policy had not been paid. The director further indicated that the testimonial evidence provided by [REDACTED] implied that the petitioner and her spouse maintained separate financial accounts. The director noted that the only evidence of a bank account consisted of an account held in trust for the petitioner by her spouse. Finally, as it relates to the filing of the petitioner's taxes, the director found that although the petitioner claimed to have resided with her spouse for more than 8 years, she submitted only a single jointly filed income tax return. Despite the director's thorough discussion regarding the deficiencies of the petitioner's evidence, on appeal counsel provides no argument to refute the director's findings or further evidence or explanation to support the petitioner's claim of a good faith marriage. Accordingly, the petitioner has failed to establish that she entered into her marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Section 204(g) of the Act states:

Restriction on Petitions Based on Marriages Entered While in Exclusion or Deportation Proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status . . . by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

As previously noted, the record shows that the petitioner married her husband while in proceedings before the Service and the record contains no evidence that the petitioner resided outside of the United States for two years after her marriage.

The bona fide marriage exception to section 204(g) of the Act also does not apply to the petitioner. Section 245(e) of the Act states:

Restriction on Adjustment of Status Based on Marriages Entered While in Exclusion or Deportation Proceedings

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I)(aa), 1154(a)(1)(J); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(8)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard").

As the petitioner has failed to establish that she entered into her marriage with her husband in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

Pursuant to the above discussion, the petitioner has failed to establish that she resided with her spouse, that she or her child was battered by or subjected to extreme cruelty by her spouse, and that she entered into marriage with her husband in good faith. 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. Section 204(g) of the Act further bars approval of this petition.

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

ORDER: The appeal is dismissed.