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U.S. Citizenship
and Immigration
Services

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DAB

FILE: [REDACTED]
EAC 04 128 52746

Office: VERMONT SERVICE CENTER

Date: DEC 19 2005

IN RE: Petitioner: [REDACTED]

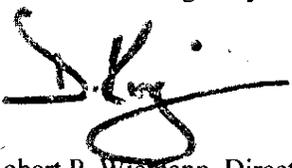
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Ukraine who is seeking 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.¹

The director denied the petition, finding that the petitioner failed to establish that she had been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and that she is a person of good moral character.

On appeal, the petitioner submitted additional evidence and requested additional time to submit a good conduct certificate. The petitioner subsequently submitted a good conduct certificate.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

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

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

¹ [REDACTED] filed a Form I-290B Notice of Appeal on the petitioner's behalf, indicating that she is the petitioner's attorney or representative. The file contains a Form G-28 Notice of Entry of Appearance signed by Ms. [REDACTED] and the petitioner. On September 23, 2005, the AAO requested that Ms. [REDACTED] submit a copy of a current Bar Admission Certificate or Card within 10 days of receipt of the letter. The AAO did not receive a response from Ms. [REDACTED] therefore, the petitioner will be considered to be self-represented.

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

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 abused 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 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.

According to the evidence on the record, the petitioner divorced her first spouse on April 12, 2001 and wed U.S. citizen [REDACTED] on March 14, 2002 in Yonkers, New York. On May 31, 2002, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The petitioner concurrently filed a Form I-485 application to register permanent residence or adjust status. The district director denied the Form I-485 application on April 22, 2004 because the underlying visa petition had been denied. On March 24, 2004, the petitioner filed a Form I-

360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that she has resided with her citizen spouse, is a person of good moral character, and entered into the marriage to the citizen in good faith.

Because the petitioner failed to submit her marriage certificate and proof of the legal termination of the petitioner's previous marriage and to sign her own statement, the director asked her to submit the same. Because the petitioner furnished insufficient evidence to establish that her spouse was a U.S. citizen, she has resided with her spouse, she is a person of good moral character, she entered into the marriage in good faith and has been abused by, or the subject of extreme cruelty perpetrated by her citizen spouse, the director asked her to submit additional evidence in a request dated November 16, 2004. The director listed evidence the petitioner could submit to establish her husband's citizenship, the battery or extreme mental cruelty to which he subjected her, that she had resided with her spouse, that she married her spouse in good faith, and that she is a person of good moral character.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here.

On appeal, the petitioner asserts that her failure to establish eligibility for the benefit sought was due to ineffective assistance of previous counsel.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

The petitioner has failed to establish that counsel whose integrity or competence is being impugned has been informed of the allegations against him and given an opportunity to respond. She failed to submit an affidavit setting forth in detail the agreement that she had with her initial counsel. She failed to establish that a complaint has been filed with the appropriate disciplinary authorities, or if not, why not. The petitioner has not established a valid claim of ineffective assistance of counsel.

On appeal, the petitioner submits a police clearance and additional evidence relating to the alleged abuse. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the

record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse. The evidence consists of the following:

- The petitioner's unsigned statement in which she states that her husband unreasonably demanded that she bear a child. She said that her husband would not let her use the phone and that he used her as a maid and nurse. She wrote, "[t]he last draw [sic] was when he would threaten me with my life." She further stated that the marriage caused her to become clinically depressed so she sought treatment.
- A letter dated February 19, 2004 verifying that the petitioner was a volunteer in a clinical research trial for Generalized Anxiety Disorder from September 18 to December 18, 2002.

It is noted that the petitioner failed to file a complaint with the police against her spouse. She failed to submit reports and affidavits from court officials, counselors, or social workers. It is not clear that the petitioner sought psychological treatment for any abuse she endured. Participating in a research trial is not necessarily treatment for abuse. She did not submit evidence that she sought refuge in a shelter or elsewhere. She did not obtain an order of protection against her spouse or take other legal steps to end the abuse. Her statements are insufficiently specific as to the exact harm she suffered from her spouse. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that she is a person of good moral character. In a request for additional evidence, the director specifically requested that the petitioner submit police clearances or records from each place she had resided for at least six months during the 3-year period before filing the Form I-360 petition. The petitioner failed to provide any clearances. She wrote in an unsigned statement that she "is a person of high moral character and [she has] never been arrested anywhere." It is not enough to make an assertion without supporting documentation. *Ibid.* The petitioner failed to overcome the director's objections to approving the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.