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B91



FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **JUL 06 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [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:

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a 35-year old female native and citizen of Brazil 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.

The director denied the petition, finding that the evidence contained in the record did not establish eligibility.

The petitioner submits a timely appeal with additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, 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;

(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 wed ██████████ in Viera, Florida on July 24, 2001. On July 27, 2003, the instant self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her 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) also requires the petitioner to show that she entered into the marriage to the citizen in good faith.

With the original filing, the petitioner submitted a statement, a translated copy of her birth certificate, copies of her passport and visa, a copy of her marriage certificate, statements from two friends, a copy of a Florida Power and Light Company bill, a copy of a letter from the U.S. Postal Service, and copies of documents and correspondence from an attorney related to a Form I-130 petition. The record contains no evidence that any Form I-130 was ever filed on the petitioner's behalf.

The director found this evidence to be insufficient and she was requested, on June 28, 2004, to submit additional evidence. The director specifically requested the following documentation:

- Evidence of the petitioner's spouse's U.S. citizenship (e.g.; U.S. birth certificate, U.S. passport, consular letter, or in the alternative, his complete name, date and country of birth).
- Evidence to support the petitioner's claim of abuse such as reports and affidavits from police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials, evidence that the petitioner has sought refuge in a shelter for the abused, photographs of injuries and affidavits from witnesses, a detailed and specific statement from the petitioner describing her relationship with her spouse and the type of abuse suffered and any after effects.
- Evidence that the petitioner resided with her spouse and married him in good faith, such as insurance policies in which the petitioner or her spouse are named as beneficiary, bank statements, joint tax records, apartment leases, bills, and other documents that show the petitioner and her spouse shared accounts and other similar responsibilities, evidence of the petitioner's courtship, wedding ceremony, residences, special events, etc., evidence of joint ownership of property, birth certificates of children born to the petitioner and her spouse and affidavits of friends and family who can provide specific information verifying the petitioner's relationship with her spouse.
- Police clearances from each place the petitioner resided for at least 6 months during the 3-year period before filing the petition.

The director afforded the petitioner 60 days in which to respond to the request for evidence and indicated that requests for additional time would be considered.

The petitioner did not respond to the director's request and the director denied the petition on November 15, 2004, finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

On appeal, the petitioner submits the evidence previously requested by the director. The petitioner indicates that she "was a little late because of the [hurricane] disaster." We do not accept the petitioner's excuse for failing to respond to the director's request in a timely manner. The director clearly indicated that the petitioner could request additional time, as needed. In this instance, the petitioner made no attempt to contact the director and request additional time.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that

clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Accordingly, the AAO will not consider the sufficiency of the evidence submitted on appeal and the appeal will be adjudicated based on the record of proceeding before the director at the time of her decision.

As it relates to the issue of the petitioner's good faith marriage and whether she resided with her spouse, the record contains the petitioner's marriage certificate, the petitioner's statement, statements from two of the petitioner's friends, a bill from Florida Power and Light Company, and a letter from the U.S. Postal Service. We do not dispute that a marriage took place. However, the fact that a legal marriage took place does not establish that the marriage was entered into in good faith.

Despite the petitioner's claim that she lived with her spouse for at least seven months, we note that the petitioner failed to submit insurance policies in which she or her spouse is named as the beneficiary, or bank statements, tax records and other documents that show she shared accounts and other responsibilities with her spouse. While the petitioner submitted a bill from the Florida Power and Light Company, the bill is in her spouse's name only, and therefore, does not suffice as evidence of a bona fide marriage or show that there was joint responsibility for this bill. Similarly, the letter from the U.S. Postal Service is addressed to the "Wieser Family," and makes no indication that the petitioner lives at the listed address. The record contains no other documentation to show that the petitioner received mail at this address. Further, the record lacks evidence of the commingling of funds or joint financial liabilities, or other objective evidence to indicate that the petitioner and her husband intended to establish a life together and did, indeed, reside together.

The remaining evidence consists of the petitioner's statement and the statements of the petitioner's friends. In her statement, the petitioner states that she "entered into marriage . . . in good faith and with the hope to have a family for all of us." The petitioner fails to provide any specific details regarding her courtship with her spouse, such as how she met him, how long they dated prior to their marriage, and whether she met her spouse's family. Further, the petitioner's statement fails to provide any details regarding their married life together. The petitioner states only, "[w]e were together from July until March, when he kicked me out. . . ."

Similarly, the statements from the petitioner's friends provide scant details surrounding the petitioner's courtship and marriage. The first statement, written by [REDACTED] indicates that the petitioner "entered into marriage . . . in good faith two years ago." The second statement, written by [REDACTED] indicates that Ms. [REDACTED] served as "one of the witnesses and translator" of the petitioner's marriage. Neither witness provides any details regarding the petitioner's relationship with her spouse prior to or during their marriage.

The general statements, combined with the lack of documentary evidence of joint assets or liabilities or a shared residence are insufficient to establish that the petitioner entered into her marriage in good faith or that she resided with her spouse.

The record also fails to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse. The statements submitted in support of the petition indicate that the “mistreatment” suffered by the petitioner was due to the fact that her spouse “made her leave the house,” and “that he abandoned her” after he received money from her for her immigration papers.

The record contains no police reports, court records or other documents such as photographs to demonstrate that the petitioner was subjected to physical abuse. Further, the fact that the petitioner was “[left] on the street, with no support,” is insufficient to establish that the petitioner was subjected to extreme cruelty by her spouse.

Further, the petitioner failed to provide evidence of her spouse’s United States citizenship to establish that she has a qualifying relationship as required by the Act and 8 C.F.R. § 204.2(c)(1)(i)(A) and (B).

Finally, the petitioner failed to provide evidence of her good moral character as required by the Act and 8 C.F.R. § 204.2(c)(1)(i)(F).

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.

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