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**U.S. Citizenship
and Immigration
Services**

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FILE:

EAC 05 065 51025

Office: VERMONT SERVICE CENTER

Date: JUL 03 2006

IN RE:

Petitioner:

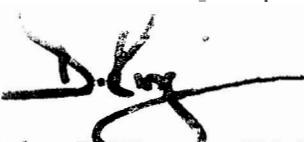
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 classification as a special immigrant pursuant to 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, finding that the petitioner failed to establish that she married her U.S. citizen husband in good faith.

On appeal, the petitioner submits additional testimonial evidence.

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 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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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 standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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.

* * *

(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 petitioner in this case is a native and citizen of Russia who entered the United States on March 28, 2001 as a nonimmigrant visitor (B-1). On December 20, 2002, the petitioner married [REDACTED] a U.S. citizen, in California. On December 29, 2004, the petitioner filed this Form I-360. On May 18, 2005 the director issued a notice requesting the petitioner to submit additional evidence that, *inter alia*, she married [REDACTED] in good faith. The petitioner requested and was granted additional time to respond and on September 22, 2005 submitted additional evidence including documentation that she and [REDACTED] were divorced on June 2, 2005. On November 8, 2005, the director denied the petition because the record failed to establish that the petitioner married [REDACTED] in good faith. The petitioner timely appealed.

As we concur with the director's determination that the petitioner meets all the other statutory requirements, the only issue on appeal is whether the petitioner married [REDACTED] in good faith. On appeal, the petitioner states that she had a bona fide relationship with [REDACTED] and submits additional support letters. We concur with the director's conclusion and find that the evidence submitted on appeal does not overcome the ground for denial. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Entry into Marriage in Good Faith

As evidence of her good faith marriage, the petitioner submitted two photocopies of photographs of the former couple's wedding; copies of utilities bills; a copy of her roundtrip airline ticket itinerary and receipt from Los Angeles to Portland, Oregon; a copy of the former couple's joint lease and rent receipts; and documentation of the former couple's joint bank account. The photographs indicate that a wedding took place, but do not establish the petitioner's good faith entry into the marriage. The utilities bills indicate that the former couple had joint accounts, but the bills are all dated after the

petitioner stated (on her Form I-360) that she and [REDACTED] separated in December 2003. The petitioner's airline ticket indicates that she went to Portland, Oregon on August 24, 2004 and returned on September 4, 2004, but this trip took place after the petitioner states that the former couple had separated and does not in itself establish the petitioner's good faith entry into their marriage. The joint lease is dated November 5, 2003, just one month before the petitioner states that she and [REDACTED] separated. The banking documents show that the former couple opened a joint account on July 14, 2003, but the majority of the submitted statements are dated after their separation. The statements from October through December 2003 show few withdrawals and deposits.

The petitioner also submitted letters from her friends,

[REDACTED] and [REDACTED], and [REDACTED]. [REDACTED] states that the former couple visited her family in July 2004 and she thought they were a very nice couple. [REDACTED] states that she was invited to the former couple's home on numerous occasions and that they also visited her home several times. [REDACTED] states that the petitioner and [REDACTED] were married and lived together for more than a year. [REDACTED] and [REDACTED] confirm that the former couple lived together and had "joined household." [REDACTED] states that she had a good relationship with the former couple and was happy that the petitioner had found a good husband. These letters provide no substantive discussion of the petitioner's good faith in marrying [REDACTED], as observed by the authors.

In response to the director's request for additional evidence, the petitioner submitted copies of four photographs of her wedding and an automobile insurance policy statement for the petitioner, which lists [REDACTED] as an excluded driver. The insurance statement is dated four months after the petitioner states that she and [REDACTED] were separated. We concur with the director's determination that the evidence submitted below does not establish the petitioner's good faith entry into marriage with [REDACTED] and we do not repeat his discussion here.

On appeal, the petitioner submits a letter from [REDACTED] and additional letters from [REDACTED] [REDACTED], and [REDACTED]. These letters briefly describe social outings that the authors attended with the petitioner and [REDACTED] and the authors' perception that the former couple had a bonafide marital relationship. Their brief statements do not establish that the petitioner married [REDACTED] in good faith.

In her own affidavits submitted below, the petitioner states that she met [REDACTED] at a party of a mutual acquaintance on May 7, 2002. Although initially finding [REDACTED] to be a strange and upset person, the petitioner states, "Time pass and I fell in love with him. I thought that he fall in love with me too. On October [REDACTED] found a job and on the 20th of December we got married. And I hopped [sic] that we will have a happy marriage." The petitioner does not further discuss how the couple met, their courtship, wedding or any of their shared experiences, apart from [REDACTED] abuse.

The relevant evidence does not corroborate the petitioner's claim that she married [REDACTED] in good faith. The record indicates that the petitioner and [REDACTED] resided together and had a joint bank

account. Yet the petitioner submitted only three bank statements dated prior to their separation, which show little usage of the account. Although she submitted evidence that the former couple had joint utilities accounts, the petitioner submitted no statements from these accounts that are dated prior to their separation. The record thus contains almost no evidence that the couple shared assets and liabilities prior to the breakdown of their marriage or other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). 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 own testimony provides no detailed, substantive discussion of the couple's courtship, wedding and marital experiences (apart from the abuse).

The present record does not demonstrate that the petitioner married [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii) of the Act. 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 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.