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FILE:

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Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner: [REDACTED]

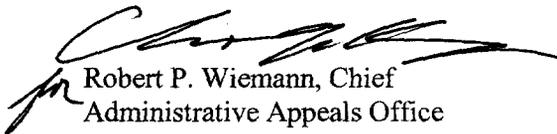
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

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 appeal will be dismissed.

The petitioner seeks immigrant classification 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 because the petitioner did not establish that her husband battered or subjected her to extreme cruelty and that she entered into her marriage in good faith.

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:

(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 standard and 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.

* * *

(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 Lithuania who entered the United States on May 6, 2001 as a nonimmigrant visitor (B-2). On February 14, 2003, the petitioner married R-B-¹, a U.S. citizen, in Illinois. The petitioner

¹ Name withheld to protect individual’s identity.

filed the instant Form I-360 on October 8, 2004. The petitioner's marriage to R-B- was dissolved on October 11, 2006 by order of the Circuit Court of Cook County, Illinois. On October 21, 2004, the director indicated that the petitioner had failed to establish her prima facie eligibility and requested evidence of, *inter alia*, the petitioner's good faith marriage. The petitioner responded to the request on January 3, 2005. On February 18, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty and good faith marriage. The petitioner, through counsel, timely responded. On June 19, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish the requisite battery or extreme cruelty and good faith marriage. The petitioner, through counsel, timely responded to the NOID. The director denied the petition on October 6, 2006, finding that the petitioner failed to establish that she or her child had been battered by or subjected to extreme cruelty during her marriage and that she entered into her marriage in good faith.

On appeal, counsel claims that the evidence establishes the petitioner's eligibility. Counsel resubmits copies of documents previously submitted as well as a copy of the petitioner's Judgment for Dissolution of Marriage. Counsel's contentions and the new evidence do not overcome the grounds for denial and the appeal will be dismissed.

Battery or Extreme Cruelty

With her initial submission, the petitioner submitted no evidence to support a claim of abuse or extreme cruelty. In response to the director's October 21, 2004 request for evidence, the petitioner submitted two letters from her friends. The letters indicate that the petitioner's spouse was often drinking with his friends, that he did not work, and that the petitioner was afraid to leave her daughter with her spouse while the petitioner was working. Although one letter indicated that the petitioner's spouse was "very abusive towards" the petitioner, the letter does not elaborate on the abuse, such as whether it was verbal, mental or physical, and does not offer any specific facts which would support the claim of an abusive relationship.

In response to the director's February 18, 2005 request for evidence, the petitioner submitted her own statement and a second letter from a friend. In her initial statement, the petitioner claimed that her spouse got into trouble because of his "drinking habit," that he received bills from hospitals and law firms, could not hold a job, and was not supportive financially or emotionally. The petitioner further claimed that she paid all of the bills and was responsible for maintaining the household. Although the petitioner also claimed that she was "emotionally abused" and "insulted," and that she was afraid to leave her daughter with her spouse, she did not provide any details which would demonstrate a claim of emotional abuse or to establish that her daughter was abused by her spouse. In the second letter from the petitioner's friend, the friend reiterated her previous claim regarding the petitioner's spouse's drinking but failed to provide any specific facts to support a claim of abuse.

In response to the director's NOID, the petitioner submitted a second statement in which she reiterates her previous claims but also provides further details regarding the alleged abuse. For instance, in her second statement, the petitioner claims that her spouse called her names, made fun of her English

ability, "made constant remarks that made [her] feel bad and not-worthy," and indicates her suspicion that her spouse was having an affair with the mother of his children

On appeal, counsel submits a copy of the petitioner's Judgment for Dissolution of Marriage in which the court found that the petitioner's spouse was "guilty of extreme and repeated mental cruelty towards the Petitioner." Counsel does not provide the bill of complaint or other evidence which establishes the claimed facts upon which the court based its finding. Further, counsel does not provide any legal argument or case law which demonstrates that a finding of "mental cruelty" in an Illinois divorce proceeding is tantamount to a finding of "extreme cruelty as defined by 8 C.F.R. § 204.2(c)(1)(vi).

As discussed above, the testimonial evidence submitted in support of the petition fails to establish that the petitioner's former husband battered or subjected her or her daughter to extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The petitioner and the other affiants do not make any allegation of a threat of or actual physical abuse or violence. The testimonial evidence also fails to indicate that her former husband's nonviolent actions were otherwise part of an overall pattern of violence or that his behavior constituted psychological abuse.

Good Faith Marriage

In her initial statement, the petitioner provided no details regarding how she met her spouse, their courtship, and subsequent marriage apart from her claim of abuse during the marriage. In her second statement, the petitioner indicates that she met her spouse in the spring of 2002 while shopping at Wal-Mart where her spouse was employed. She indicates that upon coming to the store for the third time she agreed to give him her phone number and they began dating on weekends. The petitioner then claims that in September 2002, they decided to move in together and married on February 14, 2003. While the petitioner generally states that she married "only for good reasons," she does not elaborate on her feelings or intent at the time of her marriage and does not provide any specific details regarding their relationship. The letters submitted on the petitioner's behalf confirm the fact that the petitioner was married but provide no details which would establish the petitioner's good faith intent in marrying her citizen spouse.

Although the petitioner also submitted several photographs, copies of credit cards, a voided check, and a lease, this documentary evidence does not carry sufficient weight to establish the petitioner's good faith marriage. The photographs, while evidence that the petitioner and her spouse were together at a particular place and time, contain little probative value in establishing her good faith intent. The petitioner fails to describe the date or time the photographs were taken, the importance of the events recorded, or any other information about the photographs to establish their relevance to the petitioner's claim of a good faith marriage. As it relates to the copies of credit cards and the single voided check, the record contains no evidence of the joint use of any of these accounts such as copies of the credit card statements, bank account statements, or cancelled checks showing that both she and her spouse had access to and use of the accounts. Finally, although the lease may be used as

evidence that the petitioner and her spouse resided together, the lease, by itself, is not sufficient evidence of a good faith marriage.

As discussed above, the petitioner has failed to establish that her former husband battered or subjected her or her daughter to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act and that she entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Consequently, the petitioner is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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.

ORDER: The appeal is dismissed.