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U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUL 13 2005

IN RE:

Petitioner:

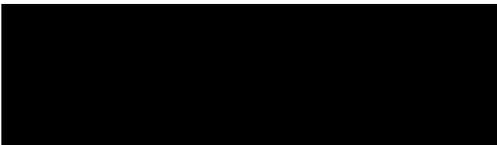
Beneficiary:



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:



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 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 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 petitioner failed to establish that she has been battered by or the subject of extreme cruelty perpetrated by her citizen spouse.

The petitioner submits a timely appeal.

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 [Secretary of Homeland Security] 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.

According to the information contained in the record, the petitioner wed United States citizen [REDACTED] in Manhattan, New York on September 29, 1997. On October 2, 1997, the petitioner's spouse filed a Form I-130 on the petitioner's behalf. The Form I-130 was approved on September 24, 1998. Concurrently, the petitioner's Form I-485 was approved and the petitioner was granted status as a conditional permanent resident. On August 9, 2000, the petitioner filed a Form I-751 petition to remove the conditions on her residence. The petition was denied by the District Director, Newark, New Jersey, on July 3, 2002 and the petitioner's permanent residence status was terminated. The instant Form I-360 self-petition was filed by the petitioner December 6, 2002, 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)(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.

Further, 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 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).

With the initial filing, the petitioner submitted a copy of her marriage certificate and a copy of her spouse's social security card. The director determined this evidence was insufficient to establish eligibility and on September 8, 2003, requested the petitioner to submit additional evidence.

As it relates to the petitioner's claim of abuse, the director specifically requested the following documentation:

- Reports and affidavits from: police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that you have sought refuge in a shelter for the abused.
- Photographs of your injuries, and affidavits from witnesses, if possible.
- A statement, in your own words describing the relationship with your abuser. Be as specific and detailed as possible, including an explanation of the type of abuse (e.g., verbal, social isolation, possessiveness, quality of life) suffered and the after-effects of the abuse.
- Affidavits from individuals who were present at the time the incident(s) occurred.

On November 10, 2003, the petitioner provided her response to the director's request by submitting a police clearance from the state of New Jersey, the petitioner's letter to the state of New Jersey requesting the police clearance, and a copy of the Service's September 29, 2003 letter to the petitioner regarding the petitioner's Form I-751. The petitioner did not submit any information or evidence related to her claim of abuse.

The director denied the petition on March 18, 2004, after reviewing and discussing the evidence submitted into the record. The discussion will not be repeated here.

The petitioner submitted a timely appeal on April 19, 2004, and requested 30 days in which to submit additional evidence. On September 10, 2004, nearly five months after the filing of the appeal, the petitioner submitted additional documentation to support the appeal to the Vermont Service Center.¹ We note that the regulations do not state or imply that the petitioner may freely supplement the record up until the date of appellate adjudication without making a written request and demonstrating good cause. 8 C.F.R. § 103.3(a)(2)(vii). Not only did the petitioner fail to request an extension beyond the 30 additional days she initially requested, but she also failed to show good cause for the filing beyond this period. Regardless, 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). If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.*

¹ As the petitioner submitted the documents to the Vermont Service Center rather than directly to the AAO, the AAO did not receive the additional evidence until March 24, 2005. In instances where the petitioner requests additional time to submit a brief and or evidence after the filing of the appeal, the regulation requires the petitioner to submit additional evidence *directly* to the AAO. *See* 8 C.F.R. § 103.3(a)(2)(vi).

Even if the petitioner's appellate submission were considered, we would not find the evidence sufficient to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage.

The petitioner's appellate submission consists of copies of the petitioner's and the petitioner's spouse's passports, a copy of the petitioner's marriage certificate, medical documents related to the petitioner's stomach stapling surgery, copies of tax documents for the petitioner and her spouse, a copy of the petitioner's lease with her spouse, a letter regarding the petitioner's joint account, and a copy of two photographs. This evidence has no correlation to the petitioner's claim of abuse.

Additionally, the petitioner submits her own statement and a statement from an acquaintance. The statements are not affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Such unsworn statements carry little evidentiary weight.

Moreover, both statements lack the specificity necessary to establish the petitioner's eligibility. For instance, in her statement, although the petitioner claims that her spouse would call her names, that he had an affair with another woman, and that in order to win him back, she decided to undergo stomach stapling surgery, we do not find such facts rise to the level necessary for the petitioner to establish that she has been subjected to extreme cruelty.

Further, neither statement adequately documents the petitioner's claim of physical abuse. The petitioner's general statement that her spouse "became more aggressive every day, he hit me at fewer occasions, I was verbal [sic] and physically abuse[d]," does not provide sufficient detail to document her claim. Although the petitioner's acquaintance claims she was a witness to the petitioner being called names, as previously noted, the name-calling described is not tantamount to a finding of extreme cruelty. Finally, the acquaintance does not indicate that she was an eyewitness to any physical abuse.

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.