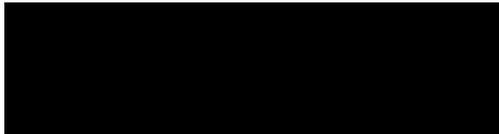




U.S. Citizenship
and Immigration
Services

B9



FILE: [REDACTED]
EAC 03 226 55138

Office: VERMONT SERVICE CENTER

Date: OCT 20 2005

IN RE: Petitioner: [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

PUBLIC COPY

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the preference visa petition, and 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 Kenya 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 resided with the U.S. citizen spouse, has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and entered into the marriage to the citizen in good faith.

On appeal, the petitioner submits her own statement.

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;

(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.

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

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.

The record reflects that the petitioner last entered the United States as a B-1 nonimmigrant visitor on February 17, 2002. According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on April 19, 2002 in Springfield, Massachusetts. On August 1, 2003, the petitioner filed a 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), in part, requires the petitioner to show that she has resided with her citizen spouse and entered into the marriage in good faith.

Because the petitioner furnished insufficient evidence to establish her husband's citizenship, her marriage, that she has resided with her spouse, 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 on July 29, 2004. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that she had resided with her spouse, that she married her spouse in good faith, her marriage and her husband's citizenship.

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.

The first issue in this proceeding is whether the petitioner has established that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the United States citizen spouse. 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 statement indicating that her husband "emotionally tormented" her and "used the F and B words on [her]."
- A letter dated May 21, 2003 from the director of [REDACTED] stating that he had provided counsel to the petitioner, and that the petitioner and her husband had a "difficult marriage."
- A November 11, 2003 order for protection for [REDACTED] and her two children restraining the petitioner's husband.

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. The order for protection does not relate to the petitioner. 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. The letter from Oasis Ministries International is also vague. The conduct she describes does not rise to the level of "extreme cruelty."

The second issue in this proceeding is whether the petitioner established that she entered into the marriage in good faith. The director determined and the AAO concurs that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. The petitioner provided Citizenship and Immigration Services (CIS) with her own statement, two

photographs of the petitioner with her spouse, an affidavit from [REDACTED] one bank statement and a purchase agreement. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith. The petitioner provided scant details about her courtship and life with her spouse. Photographs are not given great weight because they do not demonstrate the petitioner's intent to enter into a bona fide marriage. The bank statement for a joint account is for a single month. The May 20, 2002 "purchase agreement" is signed by the purchasers only. There is no signature line for the seller. In his affidavit [REDACTED] states that on May 20, 2002, he sold his truck to the petitioner and her spouse, but he says nothing more about the bona fides of the marriage. The evidence is insufficient to establish that the petitioner entered into the marriage in good faith.

The third issue in this proceeding is whether the petitioner resided with her U.S. citizen spouse. The record contains scant and contradictory evidence to demonstrate that the petitioner had resided with her U.S. citizen spouse. According to the petitioner's marriage certificate issued on April 16, 2002, the petitioner resided at [REDACTED] and her husband resided at [REDACTED]. An affidavit dated October 6, 2004 states that the petitioner and her spouse had lived at [REDACTED] respectively since 2002. The petitioner submitted an order for protection dated November 2, 2003 that shows her spouse lived at [REDACTED]. She also submitted a bank statement dated October 3, 2002 listing her address as [REDACTED]. In his decision, the director highlighted these discrepancies. On appeal, the petitioner seeks to explain the discrepancies by stating that she and her husband lived at a two-family rooming facility and when [REDACTED] was closed for renovations, her spouse moved temporarily moved in with [REDACTED] so he could babysit and earn some money. She further states that her husband later moved to [REDACTED] and she moved to [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not adequately reconciled the discrepancies in the record. The evidence is insufficient to establish that she resided with her husband.

Beyond the director's decision, the petitioner failed to establish that she is a person of good moral character as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(F).

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states, in part:

Good moral character. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality for state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition.

The record does not contain the requisite affidavit or any of the accompanying police clearances or state-issued background checks. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683

(9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.