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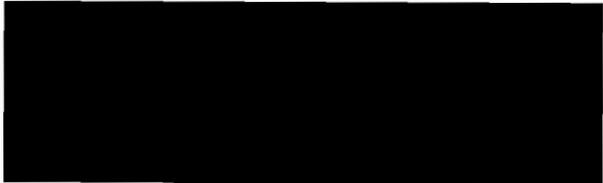
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship and Immigration Services

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FILE: [Redacted]
EAC 04 263 52731

Office: VERMONT SERVICE CENTER

Date: APR 07 2006

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:



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 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of India who seeks classification as an 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse. Citizenship and Immigration Services (CIS) records indicate that the petitioner entered the United States without inspection in 1997. On September 4, 1997 in Panorama City, California the petitioner married [REDACTED], who was a U.S. lawful permanent resident at the time. Mr. [REDACTED] filed a Form I-130 on the petitioner's behalf, which was approved on October 1, 1998. The petitioner and Mr. [REDACTED] were divorced on April 26, 2001. Mr. [REDACTED] became a naturalized citizen of the United States on March 19, 2002. On November 5, 2003, the petitioner filed a Form I-589 application for asylum with the CIS San Francisco Asylum Office. During an interview with an asylum officer on January 13, 2004, the petitioner admitted to falsely stating that she was single, that she did not have any children, that she entered the United States in 2002 (not 1997); and that her claim of persecution in India was fictitious. The asylum officer referred the petitioner's case to an immigration judge and on January 27, 2004, CIS served the petitioner with a Notice to Appear for removal proceedings.

Testifying before the immigration judge, the petitioner admitted to making false statements in connection with her asylum application and ultimately withdrew her request for asylum. The petitioner applied for cancellation of removal and voluntary departure. On June 1, 2005, the immigration judge pretermitted the petitioner's cancellation application for failure to meet the statutory requirements, denied her application for voluntary departure, and ordered the petitioner removed from the United States pursuant to section 237(a)(1)(A)(i) of the Act. The petitioner filed an appeal of the immigration judge's decision with the Board of Immigration Appeals on June 6, 2005.

The petitioner filed her Form I-360 on September 22, 2004. On June 10, 2005, the director denied the petition because the petitioner was divorced from Mr. [REDACTED] more than two years before the petition was filed. Counsel timely filed this appeal on June 20, 2005. For the reasons discussed below, we concur with the director's determination that the petitioner did not have a qualifying relationship with a United States citizen and also find that the present record does not establish that the petitioner entered into her marriage with Mr. [REDACTED] in good faith, resided with him, or was subjected to battery or extreme cruelty by Mr. [REDACTED]. Counsel has submitted no brief or additional evidence on appeal. Counsel's assertions on the Form I-290B do not address the director's basis for denying the petition and do not overcome the additional deficiencies of the petition addressed below. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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).

Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, an alien who has divorced a United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person

who was a bona fide spouse of a United States citizen within the past 2 years and –

* * *

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.

Section 204(a)(1)(A)(iii) (II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC).

Qualifying Relationship

The record shows that the petitioner married Mr. [REDACTED] on September 4, 1997 in California. However, in her affidavit submitted with the Form I-360, the petitioner states that she married Mr. [REDACTED] on October 21, 1995 in India. The record is devoid of any evidence of the couple's 1995 marriage in India, or evidence that if such a marriage was conducted, the couple's remarriage in 1997 would be valid under California law. 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 stated that independent objective evidence of her 1995 marriage to Mr. Singh does not exist or is unobtainable.

Regardless of their actual marriage date, the couple was divorced in 2001. In response to the director's March 25, 2005 request, the petitioner submitted a copy of the April 26, 2001 judgment of the Los Angeles County Superior Court of California, which dissolved the marriage between Mr. [REDACTED] and the petitioner. The petitioner's Form I-360 was filed over three years after she was divorced from Mr. [REDACTED]. Consequently, she is ineligible for classification under section 204(a)(1)(A)(iii) of the Act.

Entry into the Marriage in Good Faith and Joint Residence

Beyond the director's decision, the present record does not establish that the petitioner entered into her marriage with Mr. [REDACTED] in good faith or that she resided with him. The regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 evidence will be considered.

The petitioner submitted her own affidavit and those of six purported family friends to establish her good faith entry into her marriage and her joint residence with Mr. [REDACTED]. In her affidavit, the petitioner states:

I was married to [REDACTED] on October 21, 1995. After marriage two years [sic] I stayed in India. My husband make arrangement with an agent and be bring [sic] me to USA on someone else [sic] passport. I came to New York in 1997 and after three days I came to Los Angeles with my husband [REDACTED]. My husband and his family were living in a four bedroom apartment in Los Angeles.

The petitioner does not further discuss her entry into marriage with Mr. [REDACTED] or their joint residence. She does not explain how the couple met, their courtship, wedding ceremony, shared residence or any

shared experiences apart from Mr. [REDACTED]'s alleged abuse. The petitioner also does not explain why, if she was already married to Mr. [REDACTED] in India, the couple remarried in 1997 in California. The petitioner does not state that she resided with Mr. [REDACTED] in India and does not provide any details regarding their purported joint residence in the United States.

With her Form I-360, the petitioner submitted three documents entitled "Affidavit of Good Faith Marriage and Relationship" from three family friends. These three affidavits contain a brief and verbatim description of the petitioner's residence and marital relationship. None of these three affiants explain how they have personal knowledge of the petitioner's residence with her former husband and her marital relationship. The affiants provide no detailed descriptions of, for example, any occasions where they visited the couple at their marital residence or witnessed them interacting as husband and wife. In response to the director's March 25, 2005 request for additional evidence of her good faith marriage, the petitioner submitted three additional affidavits from family friends. The name of one of these friends is identical to the petitioner's name and the record contains no evidence of their separate identities. The three additional affidavits contain nearly identical, brief statements regarding the petitioner's marriage and residence with Mr. [REDACTED]. Like the affidavits submitted initially, they contain no explanation of how the affiants have personal knowledge of the couple's residence and marital relationship. Moreover, none of the six affiants discuss the petitioner's intentions or behavior, as witnessed by them, in marrying Mr. [REDACTED]. Accordingly, the six affidavits from purported family friends are of little probative value.

The petitioner submitted almost no documentary evidence of her joint residence and good faith entry into marriage with Mr. [REDACTED]. The record contains a copy of the birth certificate of the petitioner's purported child, [REDACTED], born on April 19, 2001, but the mother's name stated on the birth certificate is [REDACTED]. The three affidavits submitted in response to the director's March 25, 2005 request refer to the petitioner as [REDACTED] but the petitioner herself does not discuss her use of a different first name and the record is devoid of any documentary evidence that the name "[REDACTED]" refers to the petitioner. The birth certificate also states that the birth date of the child's mother is April 18, 1974, but the petitioner states on her Form I-360 that she was born on August 6, 1976. The petitioner provides no explanation for these discrepancies. In addition, the birth certificate does not identify the child's father. The psychological evaluation of Dr. [REDACTED] states, "[The petitioner] was admitted to a county hospital for her delivery by her husband, under a false name and did not disclose his real relationship to the hospital staff." Yet the petitioner herself does not discuss her husband's use of a false name or relate the circumstances of her daughter's birth in any detail in her affidavit. For these reasons, the birth certificate of [REDACTED] is not probative evidence of the petitioner's good faith entry into marriage with Mr. [REDACTED].

The present record does not establish that the petitioner entered into marriage and resided with Mr. [REDACTED] in good faith as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2).

Battery or Extreme Cruelty

Beyond the decision of the director, the present record does not establish that Mr. [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage. The regulation at 8 C.F.R. §204.2(c)(1)(vi) explains that:

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.

The evidentiary guidelines to establish battery and extreme cruelty are found in the regulation at 8 C.F.R. §204.2(c)(2)(iv), which states:

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.

In her affidavit, the petitioner states that after she came to live with her husband in Los Angeles, Mr. [REDACTED] called her mother in India and threatened to send the petitioner back to India unless her mother gave him more money. The petitioner reports that her husband and mother-in-law never let her leave the house and that she worked at home all day. The petitioner states that her husband and mother-in-law beat her whenever they wanted and once locked her in a room for a week without any food. She states that she tried to kill herself by taking an overdose, but that her husband and mother-in-law took the medicine away from her. When [REDACTED] made preparations to send the petitioner back to India, the petitioner escaped from the house and went to the home of her relatives in Michigan.

The petitioner explains that she went back to Mr. [REDACTED] after he called her, asked her to come back and promised that he would not cause her any trouble. After she returned, the petitioner states that Mr. [REDACTED] told her to sign some papers for her green card application. The petitioner explains that she

could not read or write English and did not know, until Mr. [REDACTED] later took her to a lawyer, that the papers she had signed were for the couple's divorce. The petitioner reports that she gave birth to her daughter on April 19, 2001, after which the couple moved to South Carolina. The petitioner explains that after their move, Mr. [REDACTED] began mistreating and beating her again. She states that Mr. [REDACTED] forced her to leave the house and would not let her be with her daughter.

Dr. [REDACTED] psychological evaluation describes the petitioner's background as related to him by the petitioner and states that the petitioner developed "significant symptoms of depression" due to her husband's abuse and separation from her daughter. Dr. [REDACTED] notes that the petitioner was "somewhat nervous and anxious during the interview" and that her "thought content was not well organized," but states that the petitioner was oriented to time, person and place and that she had no perceptual disturbances, hallucinations, delusions or suicidal ideations. Dr. [REDACTED]'s evaluation is based on one meeting of unspecified length with the petitioner on June 25, 2004, over two years after the petitioner states that she separated from Mr. [REDACTED]. Dr. [REDACTED] does not state his professional credentials and the record does not indicate that he has any training or experience in diagnosing and treating survivors of domestic violence. Accordingly, Dr. [REDACTED] evaluation is of little probative value.

The six affidavits of the petitioner's purported family friends state that Mr. [REDACTED] and his mother abused the petitioner and asked for more money from her parents; that they did not allow her to leave the house or contact her friends and relatives; that they beat her and once locked her in a room for a week. None of the affiants state that they witnessed any of these events, or that they directly observed the effects of the alleged abuse on the petitioner through, for example, changes in the petitioner's behavior, physical and mental health, and interactions with them. Consequently, their affidavits are of little probative value.

The record contains no other evidence to corroborate the petitioner's claim that she was battered and subjected to extreme cruelty by Mr. [REDACTED] during their marriage. The petitioner states that she once escaped and stayed with relatives in Michigan, but none of the six family friends whose affidavits were submitted state that they live, or formerly lived in Michigan. The petitioner states that Mr. [REDACTED] would not let her have her daughter, but the record does not establish that the petitioner is the mother of [REDACTED] because of the previously discussed discrepancies regarding the mother identified on the child's birth certificate. In addition, the record contains no evidence that the petitioner ever called the police; sought help from religious figures or social service agencies; or sought medical treatment for injuries inflicted by her former husband or mother-in-law. The petitioner does also fails to explain, for example, that she was unaware that such help was available or that cultural and linguistic barriers and the constant surveillance and control of her former husband and mother-in-law prevented her from seeking help. Accordingly, the present record does not establish that Mr. [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi) and 204.2(c)(2)(iv).

The current record does not establish that the petitioner had a qualifying relationship with a United States citizen, entered into marriage with her former husband in good faith, resided with him, and was battered or subjected to extreme cruelty by him. The petitioner is thus ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1) and 204.2(c)(2).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Accordingly, the case must be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), 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 this decision.