

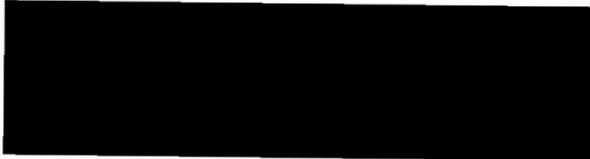
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 16 2006**

EAC 05 009 52827

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 preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition on November 1, 2005, finding that the petitioner failed to establish that she was battered by or subjected to extreme cruelty by her spouse and that she entered into her marriage in good faith.

The petitioner filed a timely appeal on December 1, 2005.¹

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 [Secretary of Homeland Security] that—

- (aa) the marriage or the intent to marry the 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;

¹ The petitioner's Form I-290B indicated that she was represented by "[REDACTED]" However, the record contained no Form G-28, Notice of Entry of Appearance as Attorney or Representative. Accordingly, the AAO requested a Form G-28 from [REDACTED] in accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii). Upon review of [REDACTED] Form G-28, we find that she is not listed as an accredited attorney or representative with the Executive Office of Immigration Review and has not otherwise established that she meets the requirements of 8 C.F.R. § 292. Therefore, we consider the petitioner to be self-represented.

(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 record reflects that petitioner married United States citizen [REDACTED] on October 10, 2003 in Lawrenceville, Georgia. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on January 21, 2004. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The petitioner filed the instant Form I-360 self-petition on October 9, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage.

With her initial submission, the petitioner submitted a copy of her marriage certificate, a personal statement with translation, a letter from her case manager and additional documentation from International Women's House, a temporary protection order issued against her spouse, two affidavits from acquaintances, a letter from the Salvation Army, a copy of the petitioner's spouse's U.S. passport, and copies of photographs, invitations, and cards.

On April 4, 2005, the director requested further evidence to establish the petitioner's eligibility. Specifically, the director requested further evidence to establish the petitioner's claim of abuse and that she entered into the marriage in good faith.

On June 1, 2005, the petitioner requested additional time in which to respond to the director's request for evidence. The director granted the petitioner's request on July 6, 2005. The petitioner responded on September 7, 2005 and submitted a copy of the dismissal of the petitioner's protection order, a second statement from the petitioner, and nine affidavits. The petitioner also resubmitted copies of documentation previously submitted.

On November 1, 2005, after reviewing the evidence contained in the record, including the evidence submitted in response to the director's request, the director denied the petition without the issuance of a notice of intent to deny (NOID) in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii),² finding that the petitioner had failed to establish that she was battered by or subjected to extreme cruelty by her spouse and that she entered into her marriage in good faith.

On appeal, the petitioner submits copies of documentation which relates to the registration of her marriage and premarital counseling with the Catholic church. The petitioner also resubmits copies of documents that were previously submitted. The petitioner does not provide any explanation or excuse for her failure to submit such evidence when requested to by the director. It is noted that in instances where 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 does not usually accept evidence offered for the first time on appeal. 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. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In this instance, however, because the petitioner was not provided with the notice of intent to deny as required by regulation, we have reviewed the petitioner's appellate submission in order to determine whether such evidence overcomes the director's stated grounds for denial and could be sustained without remanding to the director for further action. As will be discussed, the petitioner's appellate submission does not overcome the director's findings. Therefore, the case must be remanded for further review.

² The regulation at 8 C.F.R. § 204.2(c)(3)(ii) 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.

The petitioner's claim that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse.

The director denied the petition, in part, based upon inconsistencies in the petitioner's claims regarding her abuse. The director also noted the fact that the court has dismissed the petitioner's temporary order of protection, ruling that "there is no evidence of an act of family violence" Finally, the director found that "proof of shelter stay alone does not prove that your spouse's behavior rose to the level of extreme cruelty battery level." Upon review, we find concur with the findings of the director.

In her initial statement, the petitioner claimed that a month after moving into their home, approximately July 2004, her spouse began to change "because he was drinking more every day." The petitioner claimed that her spouse became verbally violent and that she went an entire week without any food except pancakes. The petitioner indicated that the last weekend she spent with her spouse was Saturday, July 31 although her spouse attempted to bring another woman into the home to live with them on Tuesday, August 3rd. From her statement, it appears that the petitioner's claims of abuse are based upon a single week during the last week of July 2004.

The statement provided by the petitioner's case manager describes the petitioner's claims that her husband drank alcohol, that he left the petitioner without food, and wanted to bring another woman into their home. However, the case manager's statement also adds details not mentioned by the petitioner. These additional details include the claims that the petitioner's spouse pounded his fists on the counter tops, slammed doors, and followed the petitioner room to room.

The affidavits provided by the petitioner's acquaintances with the original filing indicate only that the petitioner seemed "sad and distraught" and that the petitioner's spouse was "unsociable" and "a total drunk." The affiants provide no specific details regarding the petitioner's spouse's treatment of the petitioner so as to make a finding that she was battered or that she was subjected to extreme cruelty.

In her second statement, contrary to her initial statement, the petitioner makes the new claim that "shortly after we were married, the abuse began." The petitioner also makes the contradictory claim that her spouse would tell her he did not desire her and not want to be with her and yet would force her to have sex against her wishes. The petitioner also claims that her spouse became "possessive" and "domineering" and that he did not let her see her family and did not let her have her own friends. Finally, the petitioner claims that her spouse did not give her money and did not buy her any food to eat.

We do not find the petitioner's claims to be credible. First, as noted, the petitioner's statements are not consistent. Second, they are contradicted by other evidence submitted by the petitioner. Although the petitioner claims that her spouse prevented her from seeing her family and friends, the affidavits submitted on the petitioner's behalf indicate that the affiants socialized with the petitioner and her spouse "on a regular basis" at holidays, birthday parties, family parties, and family reunions. We further note that the affidavit submitted by [REDACTED] indicates that [REDACTED] actually lived with the petitioner and her spouse at their house after their marriage. If so, the petitioner's claim that she was not allowed contact with friends is not true. Moreover, if [REDACTED] was also staying in the home, she would have been a witness to the petitioner's

spouse's behavior as well as the fact that the petitioner did not have any food. However, Ms. Borjas statement makes no mention of any such occurrences.

The inconsistencies in the petitioner's statements are not sufficient to establish her claims. 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 remaining evidence, which consists of general statements made by the petitioner's acquaintances regarding the petitioner's claims of abuse, a temporary order of protection that was ultimately dismissed, and evidence that the petitioner was housed in a women's shelter, does not carry sufficient weight to establish that the petitioner was battered or that she was subjected to extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, we concur with the finding of the director that the petitioner has failed to establish that she was battered by or subjected to extreme cruelty by her spouse.

The petitioner's claim that she entered into the marriage in good faith.

As evidence to support her claim that she entered into her marriage in good faith, the petitioner submitted photographs, affidavits, invitations, and cards and letters sent to the petitioner and her spouse at their wedding. While the photographs are evidence that the petitioner and her spouse were together at a particular place and time, they provide no evidence regarding the petitioner's intent at the time of her marriage. Similarly, the cards and letters given to the petitioner and her spouse for their wedding are not sufficient to establish that the petitioner intended her marriage to be bona fide and in good faith.

Although the affidavits submitted on the petitioner's behalf attest to the petitioner's "valid, bona fide marriage," none of the affidavits provide any details regarding the petitioner's courtship or relationship with her spouse such that we can determine the petitioner's intent at the time of her marriage. Instead, the affidavits indicate only that the affiants "personally know" the petitioner and her spouse and then describe how they "came to know the couple." We note that two of the affiants did not even know the petitioner until *after* she was already married. Given the lack of detail, the affidavits are not sufficient to establish that the petitioner entered her marriage in good faith. The remaining evidence, which consists of the petitioner's statements, as previously noted are not consistent and therefore lack credibility.

In his decision, the director also noted the lack of documentary evidence such as "joint documentation corresponding to the purchase of [their] home," and other documentation such as "utility bills, telephone bills, bank statements, and proof of insurance" and the petitioner's failure to explain the lack of such documentation as part of the reason for finding that the petitioner failed to establish she entered into her marriage in good faith.

On appeal, the petitioner submits copies of documents the petitioner and her spouse completed for marriage in the Catholic Church. It is unclear how these documents are evidence of the petitioner's good faith marriage. All of the documents are dated *after* the petitioner and her spouse were already married at the courthouse. Given that the petitioner and her spouse were already married, the fact that she and her spouse underwent "premarital counseling" (despite already being married) and a separate wedding in the Catholic church is not evidence of a good faith marriage.

Regarding the lack of documentary evidence such as joint bills, the petitioner claims on appeal that she believed she was included on the "house contract" because that is what her spouse told her when he bought the house. The petitioner then claims that her spouse was "rude" and did not tell her anything about bills or house payments and that because she did not have a social security number or work authorization they did not have joint bills together. The petitioner's claim that she was not on the "house contract" is questionable given her previous statement that her father gave her a deposit to pay for the house. The petitioner's explanation that she lacks documentation because she lacks a social security number and work authorization is not convincing. Social security numbers are not needed to open a bank account or to file taxes. The fact that the petitioner does not have employment authorization does not explain the lack of tax returns for the year she was married, insurance or other joint documentation which would establish that she entered into her marriage in good faith.

In accordance with the above discussion, we concur with the determination of the director that the record is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her spouse and that she entered into her marriage in good faith. The petitioner has not overcome this finding on appeal. Despite our support of the director's findings, however, the director's decision cannot stand because of the director's failure to issue a notice of intent to deny to the petitioner prior the issuance of the denial. Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a notice of intent to deny as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

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 which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.