



U.S. Citizenship
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Services

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FILE:

EAC 05 208 50405

Office: VERMONT SERVICE CENTER

Date: DEC 13

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:

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 sustained.

The petitioner seeks classification as an immigrant 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 she resided with her former husband.

On appeal, counsel submits a brief and additional evidence.

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien 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)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

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.

* * *

(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 . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted. information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner in this case is a native and citizen of Cambodia who entered the United States on December 18, 2002 as the nonimmigrant fiancée (K-1) of T-G-*, a U.S. citizen. On January 14, 2003, the petitioner married T-G- in Utah. The former couple was divorced on April 23, 2004. On July 13, 2005, the petitioner filed this Form I-360. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite joint residence, good faith marriage and good moral character. The petitioner, through counsel, timely responded with further evidence. On April 3, 2006, the director denied the petition because the record did not establish the requisite joint residence.

On appeal, counsel submits additional evidence which establishes that the petitioner resided with her former husband and overcomes the ground for denial.

Joint Residence

The director issued the NOID, in part, because in her April 4, 2005 psychological evaluation of the petitioner, [REDACTED] stated that the petitioner's former husband "never allowed her to live in his home with his children. She was boarded in the home of his girl friend, [T-S-*], and forced to labor there. Her husband would come for sexual favors and then leave again." [REDACTED] also quotes the petitioner as stating:

Before I come here, he was good to me. When I come here, he told me he had two kids. He didn't want the two kids to know about me. He didn't tell them about me. I had to live in his girl friend's house so the kids wouldn't know about me. He said she was his best friend. He lived in his house with his kids.

* Name withheld to protect individual's identity.

However, [REDACTED] explains that the petitioner:

is not fluent in speaking the English language. She, therefore, was asked to “tell her story” in the Cambodian language to her sister. She complied, and her sister translated and recorded the series of events in chronological order for the psychologist A copy of this document is enclosed for the reader’s review.

On the Form I-360, the petitioner stated that she lived with her former husband from December 2002 until May 2003 at a residence on [REDACTED] in Midvale, Utah. In response to the NOID, the petitioner submitted a statement in which she confirmed that she lived with her former husband until May 2003 and also submitted joint bank account statements addressed to the petitioner and her former husband at the [REDACTED] address. However, the bank statements are dated from July to December, 2003 and from August to December, 2005, after the petitioner stated that she and her former husband separated. Accordingly, the director denied the petition for lack of evidence of the requisite joint residence.

On appeal, the petitioner submits her declaration dated May 31, 2006, in which she states that upon her arrival in Utah, her former husband took her to the house of another woman, T-S-, who the petitioner later found out was her former husband’s girlfriend. The petitioner explains that the house of T-S- was located at [REDACTED] which was about three blocks from the home where the petitioner’s former husband lived with his children. The petitioner states that her husband told her he had to balance her need to adjust to a new environment with his and his teen-age children’s need to adjust to her presence. The petitioner reports that the former couple spent their wedding night in their bedroom at the [REDACTED] residence. The petitioner further explains that her former husband ate breakfast with her at this residence just about every morning from January 2003 until August 20, 2003 and that during this time he would return to the [REDACTED] residence to eat dinner with her, then go to his house on [REDACTED] to care for his children and would return to spend the night with the petitioner. The petitioner states that she and her former husband shared a closet and chest of clothes in their bedroom and shared a bathroom at the [REDACTED] residence. The petitioner describes in detail the clothing, belongings and toiletry items that her former husband kept at the [REDACTED] residence, as well as the food and beverages that she prepared for her husband. For example, the petitioner states:

[My former husband] and I shared a bathroom at [T-S-’s] house. He kept a portable electric shaver, shaving cream, Dove soap, liquid toothpaste in small round-like containers, Dove hair shampoo, a brown comb, Q-tips, and blue packaged condoms.

* * *

I made one cup of coffee for [my former husband] every morning. He liked instant Folgers coffee in the brown bottle, with milk and two teaspoons of sugar. He often ate toasted white bread with butter that came in a plastic tub, and sometimes one egg, sunnyside up.

The petitioner states that on the weekends, her former husband would take her to go shopping and eat out. The petitioner explains:

He paid for everything, even though he did not give me money, at least not until July 10, 2003, when we opened a joint bank account at Wells Fargo Bank [He] deposited a starting amount of \$500, in cash. He put the address of [REDACTED] on the account because that was where we had planned to move when Ted was able to handle it with his children.

The joint bank statement dated July 10 through August 6, 2003 supports the petitioner's statements as it shows that an opening deposit of \$500 was made on July 10, 2003.

In her appellate declaration, the petitioner also explains why she did not provide her detailed testimony about her residence with her former husband in response to the NOID:

I did not discuss much of my life with [T-G-] before with my lawyer because I was too embarrassed, too ashamed, I did not speak English well, I was too ashamed to speak in front of a relative or acquaintance who interpreted. My lawyer also seemed so busy, and I was afraid to run up a big bill for his services. I could not write my story down as I did not write in English well, and I did not know how to express the very bad feelings in Khmer. The anti-depressant, anti-anxiety medication that I took helped a lot. I was also able to begin to take English classes from August 2005, first at an adult school, then at Delta Community College since January 2006. I gradually improved in my ability to express myself

The petitioner submitted evidence that she received mental health treatment and was prescribed medications for depression and anxiety beginning in January 2005, seven months before this petition was filed.

On appeal, the petitioner submits further evidence to establish her residence with her husband and to resolve the discrepancy in her statements below that she separated from her husband in May 2003, and her statements on appeal that they separated in August 2003. In her June 2, 2006 declaration, the petitioner's sister [REDACTED] clarifies that the petitioner moved to her home in California in August 2003. In her June 2, 2006 letter, [REDACTED] states that she treated the petitioner through individual psychotherapy sessions totaling 14 hours for a Posttraumatic Stress Disorder emanating from the mental and sexual abuse perpetrated by her husband." [REDACTED] explains that the petitioner "was unable to recall the last three months of her marital residence with her husband because, due to the acute mistreatment of her, she 'numbed' her mind, in order to survive. This is not uncommon in cases of Posttraumatic Stress Disorder."

In addition, the petitioner submits a notarized letter from [REDACTED] who states that he took the petitioner for driving lessons six times in 2003 and knew that the petitioner and her former husband lived together. Specifically [REDACTED] states, "I picked up [the petitioner] for driving lessons at the [REDACTED] house. When I arrive at the house for the driving lessons, [T-G-] always took [the

petitioner] outside the house. He was there also when I dropped off [the petitioner] after our lessons.” Finally, the petitioner submits a map showing that the [redacted] house and the [redacted] residence are only one-half of a mile apart, thus supporting the petitioner’s description of how her former husband could eat and sleep with her at one house, but also care for his children for a few hours each day at the other house.

While the evidence shows that the petitioner’s residence with her former husband was not traditional, the record indicates that her living situation was controlled by her former husband and was inextricably tied to his sexual abuse and infliction of extreme cruelty upon the petitioner. On appeal, the petitioner submits probative testimony about her residence with her husband at the [redacted] house and describes in detail the clothing and belongings of her husband that he kept in their shared bedroom and bathroom at this residence. The petitioner’s appellate statement also provides a credible explanation of why she did not provide her detailed testimony below and is supported by [redacted] letter of June 2, 2006. Accordingly, the evidence submitted on appeal overcomes the ground for denial and establishes that the petitioner resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal is sustained.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.