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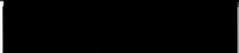
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: DEC 13 2006

EAC 06 033 50411

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 Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification as a special 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 record did not establish that the petitioner was eligible for classification based on her relationship as the spouse of a United States citizen, that she resided with her spouse, that she was battered by or subjected to extreme cruelty by her spouse, and that she is a person of good moral character.

The petitioner submits a timely appeal.

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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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.

(vi) *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, 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section

212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

* * *

(iv) *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 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.

(v) *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 or 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. Self-petitioners who lived outside the United States

during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

According to the evidence contained in the record, the petitioner married M-M-¹, a United States citizen, in San Francisco, California on August 13, 2001.² The petitioner filed the instant Form I-360 self-petition on November 7, 2005. With the initial filing, the petitioner submitted copies of her visa and Form I-94, Arrival and Departure Record, birth certificate, marriage certificate, evidence of her spouse's United States citizenship, and a personal statement. The petitioner also submitted a copy of her spouse's criminal record search in Belize, a copy of a lab order for pathology services for her spouse, and a copy of a price list for prefabricated homes in Belize.

The director found this evidence was not sufficient to establish the petitioner's eligibility and on January 9, 2006, requested the petitioner to submit, further evidence of, *inter alia*, the termination of the petitioner's prior marriage,³ that she resided with her spouse, that she was abused by her spouse, and that she is a person of good moral character.

The petitioner responded to the request on March 13, 2006 by submitting a copy of her California driver's license, copies of pages from her passport, three uncaptioned photographs, a postcard and letters to the petitioner from her spouse and her mother-in-law, her spouse's application for permanent residence in Belize, and two letters from acquaintances. The petitioner also resubmitted copies of her visa and Form I-94, her birth certificate, her marriage certificate, her spouse's citizenship information, and her personal statement.

On April 10, 2006, the director issued a notice of intent to deny (NOID) to the petitioner, indicating that the evidence was not sufficient to establish the petitioner's eligibility. On May 5, 2006 the petitioner responded to the NOID by submitting a second statement, two letters from acquaintances, and three additional photographs. The director found this evidence was not sufficient to establish the petitioner's eligibility and denied the petition on July 18, 2006, finding that the petitioner failed to establish that she was eligible for classification based upon a qualifying relationship as the spouse of a United States citizen, that she resided with her spouse, that she was battered by or subjected to extreme cruelty by her spouse, and that she is a person of good moral character.

¹ Name withheld to protect individual's identity.

² Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, that was terminated and a Form I-485, Application To Adjust Status, that was withdrawn by the petitioner.

³ The petitioner's marriage certificate, the Form I-360 and the Form I-130 indicate that the petitioner was previously married.

The petitioner submits a timely appeal with copies of evidence previously submitted as well as additional evidence. As will be discussed, the evidence submitted on appeal is insufficient to overcome the director's determination that the petitioner is not eligible for the benefit sought.

Qualifying Relationship and Eligibility for Immediate Relative Classification

Primary evidence of a qualifying relationship with a U.S. citizen spouse is a marriage certificate issued by civil authorities, and proof of the legal termination of all the self-petitioner's prior marriages. 8 C.F.R. § 204.2(c)(2)(ii). The record shows that the petitioner was married once before her marriage to M-M-. The petitioner directly properly requested the petitioner to submit evidence of the termination of her prior marriage in both the January 9, 2006 request for evidence and the NOID. However, the petitioner failed to submit any evidence regarding the termination of her prior marriage.

On appeal, the petitioner submits what is purported to be a true copy of her Decree Absolut for her prior marriage. As noted above, the petitioner was put on notice of the requirement of documentation to establish the termination of her prior marriage and was given a reasonable opportunity to provide the additional evidence before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director which did not contain the required evidence.⁴

The record, as it was constituted before the director, lacked evidence of the termination of the petitioner's prior marriage. As the petitioner failed to establish that her qualifying marriage to M-M- was valid, the director correctly concluded that the petitioner failed to establish her eligibility for classification as the battered spouse of a United States citizen.

Beyond the director's decision, because of the lack of evidence regarding the termination of the petitioner's prior marriage, the present record also does not demonstrate that the petitioner had a qualifying relationship with M-M- pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act.

Evidence that the petitioner has resided with her citizen spouse

On the Form I-360, the petitioner indicated that she married her spouse in August 2001 in San Francisco, California but failed to indicate the period of time that she resided with her spouse. In her statements, the petitioner failed to address the former couple's address or provide any probative information about their purported joint residence in either Belize or in the United States. The other evidence submitted in support of the Form I-360, such as the letters to the petitioner from her spouse and mother-in-law and the statements submitted by the petitioner's acquaintances provide no further details regarding the petitioner's residence with her spouse. Consequently, the present record fails to establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

⁴ The decree itself does not appear to have been signed by the Deputy Registrar. As such, even if the document had been considered on appeal, the lack of a signature would cause us to question the validity of this document.

In her initial statement, the petitioner claimed that her spouse abandoned her without giving her an explanation. The petitioner further claimed that on one occasion her spouse “got very mad and hit [her] in the mouth.” In her second statement, the petitioner described her spouse’s changing moods, claimed that her spouse called her names, and alleged that her spouse was using drugs. The letters submitted by the petitioner’s acquaintances indicate that she was “abandoned” by her spouse, that they had “problems” and that on one occasion, he was “abusive to her” on the telephone. Neither the petitioner nor any of her acquaintances provide sufficient details to establish that the petitioner was the victim of any act or threatened act of psychological or sexual abuse or exploitation, or that her spouse’s actions were part of an overall pattern of violence. Further, although the petitioner generally described a single incident in which she claimed to have been physically abused by her spouse, we do not find this single piece of testimonial evidence sufficient to establish a claim of battery.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(i) indicates that primary evidence of the petitioner’s good moral character is *an affidavit from the petitioner accompanied by a police clearance* from each place the petitioner has lived for at least six months during the 3-year period immediately preceding the filing of the self-petition. With the initial submission of her petition, the petitioner did not submit any of the evidence related to her good moral character. Further, despite the director’s specific request for evidence related to the petitioner’s good moral character in her request for evidence and NOID, the petitioner did not submit any such evidence in her response. No further evidence was submitted on appeal. Accordingly, the petitioner failed to establish her good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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.

ORDER: The appeal is dismissed.