



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

139

FILE:

Office: VERMONT SERVICE CENTER

Date: JUN 07 2006

EAC 04 127 52770

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 preference visa petition was denied by the 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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.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, finding that the petitioner failed to establish that she entered into the marriage in good faith.

The petitioner filed a timely appeal.

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;

(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 record reflects that the petitioner, a citizen of Iran, entered the United States as a K-1 nonimmigrant fiancée on October 2, 2003. The petitioner wed U.S. citizen [REDACTED] 22 years her senior, on November 18, 2003. The petitioner filed the instant Form I-360 ~~self-petition~~ on January 2, 2004,¹ 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. Finding the evidence insufficient to establish eligibility, on September 13, 2004, the director requested further evidence, to include her three children's birth certificates, evidence of the petitioner's good moral character, and evidence that the petitioner married her spouse in good faith.

In response to the director's request, the petitioner submitted evidence previously provided to Citizenship and Immigration Services (CIS) and submitted birth certificates of her three children, her former citizen husband's affidavit, the petitioner's declaration regarding good moral character and a certificate of no criminal record issued by Iran's Ministry of Justice.

After reviewing the evidence submitted by the petitioner, the director denied the petition on February 22, 2005, finding that the evidence was not sufficient to establish that the petitioner entered into the marriage in good faith.

The petitioner filed a timely appeal, dated August 19, 2005, with a brief. Upon review of the record, including the petitioner's appellate submission, we find that the evidence contained in the record is not sufficient to establish eligibility.

The issue to be addressed in this proceeding is whether the petitioner established that she entered into the marriage in good faith. The evidence relating to a good faith marriage is as follows:

- A marriage certificate.
- The divorce certificates of the petitioner and her citizen spouse terminating their prior marriages.
- A statement written by the petitioner's citizen spouse, Mr. [REDACTED] dated November 30, 2002.
- An affidavit written by Mr. [REDACTED] dated January 4, 2004.
- Photographs of Mr. [REDACTED] presenting the petitioner with an engagement ring in the presence of two of her children.
- The petitioner's declarations dated December 29, 2003 and March 17, 2005.

¹ The petitioner filed another Form I-360 petition on March 16, 2004, which is still pending (EAC 04 127 52770)

- A letter and a psychological report written by [REDACTED], Passages Psychological Services.
- An affidavit written by [REDACTED]

The director noted and the AAO concurs that while a marriage certificate and divorce decree are evidence that a legal marriage occurred, it is not sufficient evidence to establish the existence of a good faith marriage.

The letter and affidavit written by Mr. [REDACTED] are of little probative value because this issue relates to the petitioner's intent, rather than that of her spouse. He provided scant specific details about their courtship and marriage. Although Mr. [REDACTED] asserted that the petitioner had good intentions, he is not necessarily a credible source of such information. He stated that although he initiated an action for nullity of marriage based on fraud and in the alternative, dissolution of marriage, he petitioned for nullity of marriage "in the heat of frustration and anger over the break up of [their] marriage." Similarly, photographs of the marriage proposal have no value.

In an affidavit dated March 17, 2005, the petitioner "affirm[ed] that [she] entered into the marriage in good faith and remained in the marriage in good faith during the entire duration of the marriage." It is not enough to make conclusory assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner failed to provide any details about their courtship and marriage ceremony in her March 17, 2005 affidavit. In an affidavit dated March 9, 2004, the petitioner indicated that she met Mr. [REDACTED] through a friend who had showed a picture of her to Mr. [REDACTED] who sought permission to telephone her long distance. They became acquainted over the telephone then Mr. [REDACTED] traveled to Iran to meet her in person. She said that they spent every day of his 30-day visit together and decided to marry. The petitioner provided no details of her marriage ceremony or celebration, if any. It is noted that the petitioner indicated in her affidavit dated March 9, 2004, that she married her citizen spouse after he attempted to sodomize her on their first night together in the United States and she learned that he abused drugs.

[REDACTED] indicated in an affidavit that he had known the petitioner many years and that in several phone conversations she "expressed her excitement and willingness to have a real and valid marriage" prior to her entry into the United States. The affidavit lacks specific details about these conversations and therefore has little probative value.

In a letter, [REDACTED] Ph.D., stated that he reexamined his clinical notes taken while evaluating the petitioner and that the "notes make it quite evident that her intention for getting married and living a happy life in the United States was genuine and bona fide. She entered this marriage in good faith, but then realized that her husband is quite abusive." In fact, the petitioner indicated that she discovered that Mr. [REDACTED] was abusive prior to their marriage. It is noted that Dr. [REDACTED] incorrectly stated that the petitioner initiated divorce proceedings with her citizen spouse four months after marriage. On the contrary, the petitioner's spouse initiated divorce proceedings less than one month after marriage. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The value

of Dr [REDACTED] statement is diminished in light of the contradictions between the timeline of events that he recounts and the actual timeline of events.

Based upon the above discussion, we find the director properly considered the evidence submitted by the petitioner and that such evidence was afforded the proper weight. It should be noted that CIS has the sole discretion in determining what evidence is credible and the weight to be given the evidence.² Accordingly, we concur with the director's findings that the petitioner failed to establish that she entered into her marriage in good faith. The petitioner's appellate submission does not overcome the director's stated grounds for denial.

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 (NOID) to the petitioner prior the issuance of the denial.

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.

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.³ 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 this decision.

² See 8 C.F.R. § 204.2(2)(i) which states that the determination of what evidence is credible and the weight to be given that evidence "shall be *within the sole discretion* of the Service." [Emphasis added.]

³ When issuing the notice of intent to deny, the director should consider all of the evidence contained in the record, including the evidence submitted by the petitioner on appeal.