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FILE: [Redacted]
EAC 04 253 51955

Office: VERMONT SERVICE CENTER

Date: MAR 24 2006

IN RE: Petitioner: [Redacted]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to 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, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Mexico who seeks classification as a special 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. The record indicates that petitioner entered the United States in 1991 without inspection and married [REDACTED] a U.S. citizen, on October 19, 2002 in Nevada. The petitioner filed her Form I-360 on August 30, 2004. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a notice on September 23, 2004 requesting the petitioner to submit evidence that she married [REDACTED] in good faith. On December 9, 2004, the petitioner responded with additional evidence. On June 28, 2005, the director denied the petition because the evidence did not establish that the petitioner entered into the marriage in good faith. On appeal, the petitioner submits a brief and additional evidence. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish her entry into the marriage in good faith and find that her claims and the evidence submitted on appeal do not overcome this basis for denial. 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) and for consideration of the evidence submitted on appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that during the marriage, the alien was battered by or was the subject of 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 spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1)(ix) explicates the good faith marriage requirement and states:

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 filed 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.

* * *

(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.

With her Form I-360, the petitioner submitted an affidavit in which she states that she met her husband because he was the brother of her co-worker. The petitioner explains that she saw [REDACTED] at several gatherings with his sister, that they began to date and that [REDACTED] loved to go out. The petitioner explains that [REDACTED] attentions, spontaneity and the fun they had together going out caused her to fall madly in love with him. The petitioner initially submitted no documentary evidence to corroborate her statements. Accordingly, the director asked the petitioner to submit additional evidence that she married [REDACTED] in good faith in his September 23, 2004 notice. In response, the petitioner submitted two letters from individuals describing incidents of [REDACTED] abuse and a love letter and notes written by [REDACTED] to the petitioner. The two former letters attest to [REDACTED] abuse of the petitioner, but do not discuss any other aspects of the couple's marital relationship. [REDACTED] letter and notes attest to his feelings for the petitioner, but do not establish the petitioner's own intentions in marrying [REDACTED]

On March 31, 2005, the director issued a second notice asking the petitioner to submit evidence that she resided with [REDACTED]. In response, the petitioner submitted one photocopy of an unidentified photograph of herself and [REDACTED] and one handwritten note from the granddaughter of one of the petitioner's former landlords and four handwritten rent receipts from another of the petitioner's former landlords. The note and rent receipts demonstrate that the petitioner resided with her spouse, but neither these documents nor the single photocopied photograph establish that the petitioner entered into her marriage with [REDACTED] good faith.

On appeal, the petitioner states that because she only lived with [REDACTED] for less than a year and a half, she has no documents such as joint bank records, insurance policies, tax returns or other records showing shared responsibilities. She further states:

Applicant was not allowed to work once she moved with her son to be her husband [sic]. Husband was the sole provider for her and her son. There were no bank records, because husband [redacted] did not have a bank account, when he was paid in check he would cash it and used cash only. There was no money to purchase insurance policies. The utilities were included with the rent. . . . Husband[']s credit record, and criminal record, (was arrested at least two times for possession of drugs) were questionable, applicant did not want to join hers with his. Therefore, no credit cards were ever applied for jointly. Tax records, applicant ignores [sic] if husband ever filed tax returns, she was never asked to sign anything nor a coment [sic] was made to the fact. It is important to know that many questions were suppressed [sic] to avoid quarrels and limit the opportunity for the husband to get annoyed [sic] or provoked and ending in a beating. . . . There was a automobile registered in both names. However, applicant has no access to the title because was [sic] the auto the husband used. She tried to acquire a DMV record on it and not having the plates number, the Department of Motor Vehicles could not help her.

On appeal, the petitioner submits evidence of her husband's conviction on June 4, 2004 of three controlled substances offenses; a copy of a love letter written by [redacted] to the petitioner before their marriage; a letter from the petitioner's pastor; and a letter from a counselor. The evidence regarding [redacted]s criminal conviction corroborates the petitioner's explanation of why she did not apply for a joint credit card account with him. [redacted] love letter again attests to his feelings for the petitioner, but does not establish the petitioner's own intentions in marrying [redacted]

In his letter dated July 18, 2005, Pastor [redacted] the [redacted] Christian Fellowship in San Jacinto, California, states that the petitioner has been a member of his church for approximately three years and that she told him she was getting married to [redacted] and was truly in love with him. Pastor [redacted] reports that the petitioner "seemed very happy at the time." Pastor [redacted] explains that after their marriage, he counseled the couple together as well as individually when difficulties arose "because of [redacted] irrational jealousy and controlling manners, as well as physical and emotional abuse with [the petitioner]." Pastor [redacted] reports that "[m]any sessions of tears were shed by both parties over their love for each other and their desire to work it out and treat each other with respect; however, things would go along fine for a while until [redacted] would become angry over even little things and become abusive again." Pastor [redacted] explains that eventually he recommended that the petitioner separate from her husband for her own safety and that of her son. Pastor [redacted] states, "It is my opinion that [the petitioner] married [redacted] because she truly loved him and wanted to build a solid marriage for a lifetime."

In her letter dated July 20, 2005 [redacted] of Dr. [redacted] verifies that the petitioner first attended group therapy with [redacted] on January 27, 2004 and that the petitioner encouraged her husband to attend as well. [redacted] reports that [redacted] attended several group therapy sessions, but was more interested in couples' counseling. [redacted] states, [redacted] wanted the relationship to work, but addressed his difficulty in stopping behaviors that would push her away. [The petitioner] was receptive to improving the relationship, but knew that she

had to protect her safety issues. [REDACTED] was unable to follow through on group therapy, or couple's therapy; while [the petitioner] continued group therapy for many weeks seeking strength to make healthy decisions."

The current record does not establish that the petitioner entered into her marriage with [REDACTED] in good faith. While the petitioner credibly explains on appeal why documentary evidence does not exist or is unobtainable of her and [REDACTED] joint financial responsibilities and joint ownership of property, she has not explained why she has not submitted documentation of the couple's courtship, wedding ceremony or any other shared experiences, apart from [REDACTED] abuse. Although Mr. [REDACTED] love letter submitted on appeal reflects his feelings during the couple's courtship, the letter does not establish the petitioner's own intentions in marrying [REDACTED]. In their letters submitted on appeal, Pastor [REDACTED] and [REDACTED] largely discuss counseling the couple after their marriage. Pastor [REDACTED] letter provides some evidence of the petitioner's intentions in marrying [REDACTED] because he states that the petitioner told him about her marriage plans and that he observed her demeanor prior to her marriage. However, Pastor [REDACTED]'s comments alone are insufficient to establish the petitioner's good faith entry into her marriage. Based on the present record, the petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

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. On remand, the director should also consider the petitioner's statements and the additional evidence submitted on appeal.

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.