



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
EAC 04 184 51541

Office: VERMONT SERVICE CENTER

Date: **MAY 19 2006**

IN RE: Petitioner: [REDACTED]

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 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Kenya who entered the United States as a nonimmigrant visitor (B-2) on November 6, 2001. The petitioner filed a Form I-360 on May 28, 2004 seeking 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. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a notice on February 1, 2005 requesting evidence that the petitioner had resided with her U.S. citizen spouse, that he had subjected her to battery or extreme cruelty during their marriage, that she entered into their marriage in good faith and that she was a person of good moral character. The petitioner requested and was granted an additional 60 days to respond. On May 31, 2005, the petitioner submitted additional evidence, which the director determined did not establish her eligibility. Consequently, on July 29, 2005, the director denied the petition. The petitioner timely appealed.

On her Form I-290B, the petitioner stated that she entered into her marriage in good faith and indicated that she would send a brief and/or evidence to the AAO within 30 days. The petitioner dated her appeal August 24, 2005. To date, over eight months later, the AAO has received nothing further from the petitioner. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish that she resided with her U.S. citizen spouse, that he subjected her to battery or extreme cruelty during their marriage or that she entered into their marriage in good faith. However, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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:

(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.

* * *

(ix) *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 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.

* * *

(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 born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

* * *

(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.

Entry Into the Marriage in Good Faith

In this case, the record shows that the petitioner married [REDACTED], a U.S. citizen, on May 1, 2002 in New York City. With her Form I-360, the petitioner submitted copies of the receipt and approval notices for the Form I-130 petition for alien relative filed by [REDACTED] on the petitioner's behalf. In response to the director's request for additional evidence, the petitioner submitted one photograph of herself and her husband at an unspecified location on an unspecified date, a T-Mobile bill jointly addressed to the petitioner and her husband dated March 1, 2005, and her own statement. In her statement, the petitioner explains:

On May 2002 [sic] I married [REDACTED]. My marriage to him was in good faith. . . . I met [REDACTED] who helped me through all my anxieties and mental anguish. I felt in love with such a loving man. During the courtship, he was a very loving person. We did things together. We went to the movies with friends. He enjoyed listening about things in my country [sic]. We talked about going there together.

This evidence does not establish the petitioner's good faith entry into marriage with [REDACTED]. The approved Form I-130 petition may indicate [REDACTED]'s good faith in their marriage, but it does not demonstrate the petitioner's own good faith. As the director stated, the single unidentified photograph only shows that the petitioner and [REDACTED] were once together in the same place at the same time. The T-Mobile bill is dated nearly three years after the couple separated, as the petitioner indicated on the Form I-360. The petitioner's statement provides only a brief and general description of her feelings for her husband during their courtship.

The petitioner submitted no further documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and did not explain that such documents do not exist or are unobtainable. In her statement, the petitioner does not discuss how she and [REDACTED] met or describe in any detail their courtship, decision to marry, wedding, joint residence or any of their shared experiences apart from [REDACTED]'s alleged abuse. The letters of the petitioner's friend and niece do not discuss the petitioner's marital relationship with [REDACTED] except to state that the couple separated and that the petitioner went through an "ordeal" with [REDACTED]. The present record thus does not establish that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) and pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(ix).

Joint Residence

The petitioner initially submitted no evidence that she had resided with her husband. In response to the director's request, she submitted her statement and the aforementioned T-Mobile bill. The T-Mobile

bill is dated nearly three years after the petitioner states that she and [REDACTED] separated. In her statement, the petitioner explains that when they were first married, the couple lived in Newark, New Jersey for about a year. She provides no further details about their joint residence. The petitioner submitted no evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and does not explain that such documentation does not exist or is unobtainable. The present record does not establish that the petitioner resided with [REDACTED] as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The petitioner initially submitted no evidence that [REDACTED] had subjected her to battery or extreme cruelty during their marriage. In response to the director's request, the petitioner submitted her own statement and letters from her niece and a friend. The petitioner explains that shortly after they were married, [REDACTED] became very abusive. She states that he accused her of being lazy, became angry and blamed her for everything that went wrong, threatened to kill her, grabbed her by the neck, called her names and forbade her from attending church. The petitioner states that she suspected that her husband had a substance abuse problem. The petitioner explains that she was afraid to leave [REDACTED] because she had no one else in the United States. When she could stand it no longer, the petitioner states that one day while [REDACTED] was at work, she left to stay with an acquaintance in Massachusetts.

[REDACTED] of Lowell, Massachusetts, confirms that the petitioner stayed with him after she left [REDACTED] and until her life became stable. [REDACTED] the petitioner's niece, states, "I gave [the petitioner] and continue giving her moral and emotional support through her entire ordeal with her husband." Neither [REDACTED] nor [REDACTED] state that they witnessed [REDACTED] abuse the petitioner and their letters do not establish that the support they provided to the petitioner was needed because of [REDACTED] battery or extreme cruelty, rather than the breakdown of the petitioner's marriage.

The petitioner submitted no documentary evidence of battery or extreme cruelty of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and she does not state that such evidence does not exist or is unobtainable. The present record does not demonstrate that [REDACTED] subjected the petitioner to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi), 204.2(c)(2)(iv).

The present record fails to establish that the petitioner entered into her marriage with [REDACTED] in good faith, that she resided with him or that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage. 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 will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

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