

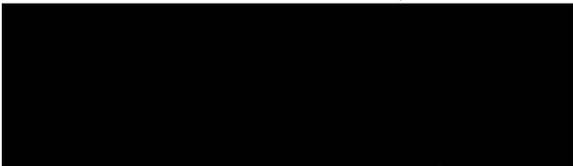
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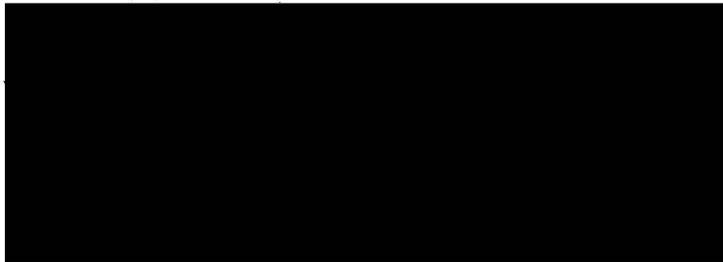


FILE: [REDACTED]
EAC 05 196 51816

Office: VERMONT SERVICE CENTER

Date: NOV 22 2006

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 Acting Director (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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 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 battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that she resided with her husband, that she was battered by or subjected to extreme cruelty by her spouse, and that she entered into her marriage in good faith.

The petitioner, through counsel, timely appealed.

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.

* * *

(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 in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. 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 relevant evidence will be considered.

The petitioner in this case is a native and citizen of Russia who entered the United States on November 28, 1991 as a B-2 nonimmigrant visitor. On December 21, 1996, the petitioner married F-M-,* a U.S. citizen, in Georgetown, Delaware. On May 10, 1997, the petitioner's spouse filed a Form I-130 in the petitioner's behalf. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 and the Form I-485 were denied on February 23, 2005. On June 29, 2005, the petitioner filed this Form I-360. On July 13, 2005, the director requested additional evidence to establish the petitioner's prima facie eligibility.¹ On

* Name withheld to protect individual's identity.

¹ The determination of prima facie eligibility is made for the purposes of 8 U.S.C. § 1641, as amended by

September 9, 2005, the director requested additional evidence of, *inter alia*, the petitioner's residence with, and good faith marriage to, her husband and evidence that she had been battered by or subjected to extreme cruelty by him. The petitioner submitted further evidence on December 16, 2005. On February 13, 2006, the director denied the petition because the petitioner failed to establish that she had resided with her spouse, that she was battered by or subjected to extreme cruelty by her spouse, and that she entered into her marriage in good faith.

The petitioner, through counsel, submitted a timely appeal with additional evidence. Upon review, while the petitioner has overcome the director's findings regarding the petitioner's claim of abuse, we concur with the director's determination regarding the petitioner's failure to establish that she resided with her spouse and that she entered into the marriage in good faith. However, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Joint Residence and Good Faith Marriage

On the Form I-360, the petitioner claims to have resided with her spouse from December 1996 until September 2003 and that she last resided with her spouse at [REDACTED]. We note that this address was the petitioner's spouse's premarital address. In her initial statement, the petitioner provided no probative details about her residence with her husband or her courtship and marriage to her spouse. The petitioner, did however, indicate that she kept possession of her previous apartment because her spouse would not allow her daughter to reside with them. As the petitioner's daughter was 12 years old at this time, the petitioner's explanation does not make clear whether her daughter remained in the petitioner's apartment alone or whether the petitioner continued to reside with her daughter at this address while her spouse remained at the [REDACTED]. In her denial, the director noted the fact that numerous documents contained in the record listed the petitioner's address at [REDACTED]. Based upon the inconsistencies between these documents and the petitioner's claimed joint residence at [REDACTED], the director found the petitioner had failed to establish that she resided with her spouse and that she entered into the marriage in good faith.

On appeal, while the petitioner submits additional documentation such as a car insurance policy and deed for property in Delaware,² the evidence submitted on appeal also contains references to both of the aforementioned addresses. Despite the fact that the director's decision was based, in part, on the inconsistent addresses, the petitioner fails to provide any further explanation for the existence of these two addresses or to provide any further details regarding her claimed joint residence and good faith marriage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We note that although the petitioner also submits a personal statement and statements from friends and relatives,

section 501 of Public Law 104-208. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition, does not establish eligibility for the underlying petition, is not considered evidence in support of the petition, and is not construed to make a determination of the credibility or probative value of any evidence submitted along with that petition.

² We note that the property was purchased for the sum of \$1.00.

the statements do not establish the petitioner's joint residence or good faith marriage with her spouse. While the statements provide details regarding the petitioner's spouse's treatment of the petitioner, the statements offer no further details regarding the petitioner's relationship with her spouse, their courtship, or the petitioner's intent in marrying her spouse. In her appellate statement, the petitioner indicates that she met her spouse in 1994 when she was having car trouble. The petitioner states that they began dating and that after a month she introduced him to her family. The petitioner summarizes her two year courtship with the following paragraph:

During the two years [F-] would sometimes stay with me at my house and sometime[s] I stayed at his. The two years passed by quickly. In November 1996 [F-], my daughter and I went to his friends in Delaware. There we got married and celebrated with all his friends. It was such a beautiful day and we all had a great time. When we returned from Delaware, I told my mother Rosa the news.

The petitioner does not further discuss their courtship, wedding, or any of their shared experiences, apart from her husband's abuse. Finally, although the petitioner also submits a copy of a bank statement, copies of cards from her spouse, and photographs of the petitioner and her spouse, this evidence is not sufficient to establish a good faith marriage. As the cards are written by the petitioner's spouse they do not address the petitioner's feelings, emotions, or intent in entering into the marriage. Similarly, while the photographs confirm that the petitioner and her husband were together at a particular place and time, they do not independently establish the petitioner's good faith in marrying her husband. We note that although the petitioner also submitted a copy of a statement from Fleet Bank, the statement does not indicate that the account is a joint account. The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). Given the lack of evidence of a joint residence and good faith marriage, combined with the inconsistencies in the evidence provided, the petitioner has failed to establish that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act and that she entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

Initially, the petitioner submitted no evidence to support her claim of abuse. In response to the director's request for evidence, the petitioner submitted a personal statement in which she claimed that her spouse would force her to have sex, locked her in the apartment with no food, and verbally and physically abused her. The director denied the petition, in part, because the petitioner failed to provide any evidence or testimony to corroborate her statement. The director noted that the petitioner failed to submit evidence that her spouse was a former police officer to support her claim that she feared her spouse. The director also found that it was not "reasonable" for the petitioner to be unable to provide any evidence from witnesses of the petitioner's spouse's treatment of the petitioner.

On appeal, the petitioner submits a second statement, statements from relatives and numerous friends and evidence which demonstrates that the petitioner's spouse was a former police officer in New York. The statements document specific incidents of physical abuse and detailed descriptions of the resultant injury to the petitioner. Upon review, we find that this evidence is sufficient to establish that the petitioner's husband battered or subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Although the petitioner has established that she was abused by her spouse, the petitioner has failed to establish that she resided with her spouse and that she entered into the marriage in good faith. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. 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.