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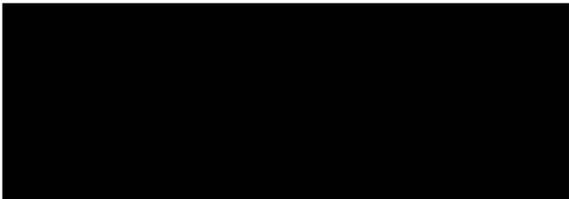
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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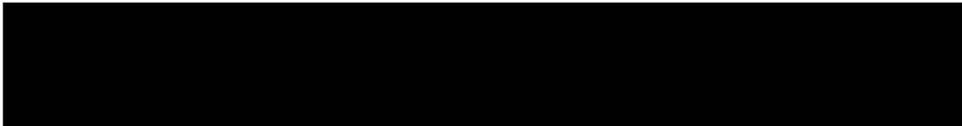
Office: VERMONT SERVICE CENTER

Date: OCT 03 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:



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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 seeks 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 petitioner failed to establish that she entered into marriage with her husband in good faith and that he battered or subjected her or her children to extreme cruelty.

On appeal, counsel submits a brief.

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 or a child of 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 eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which 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.

* * *

(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 Mexico. On the Form I-360, the petitioner states that she entered the United States in April 1992. Citizenship and Immigration Services (CIS) records show that the petitioner was ordered excluded and deported *in absentia* on June 3, 1992. On January 21, 1996, the petitioner married M-W¹, a U.S. citizen, in Clark County, Nevada. On December 14, 2004, the petitioner filed this Form I-360. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty and good faith marriage. The petitioner, through counsel, requested and was granted additional time to respond and later submitted further evidence. The director denied the appeal and the petitioner, through counsel, timely appealed.

On appeal, counsel asserts that the petitioner submitted sufficient evidence of her eligibility. We concur with the director's conclusion and find that counsel's claims on appeal do not overcome the

¹ Name withheld to protect individual's identity.

grounds for denial. Nonetheless, 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).

Battery or Extreme Cruelty

The petitioner submitted the following evidence relevant to her claim of battery or extreme cruelty: her own affidavit; handwritten statements attributed to her two daughters; a Tempe, Arizona Police Department Incident Report; Petition for and Order of Protection for the petitioner and her children against her husband; the petitioner's medical records; a letter from [REDACTED] the petitioner's Domestic Violence Advocate; criminal records of the petitioner's husband; letters from her sister and brother and their spouses.

In her affidavit, the petitioner explains that her husband had a drug problem which began to escalate in 1998. The petitioner states that in 2000, her husband came back after being away for weeks doing drugs and she refused to let him return to their home. She states, "every time he would do drugs he would get very angry and would start hitting the wall or things to vent his frustration. And although he never hit me, it was a very scary and traumatic event when he would get mad." The petitioner reports that on January 6, 2001, her husband broke into her apartment and screamed at her and her daughters. She states that her husband threatened her "by getting violent and punched the wall leaving a whole [sic] in the sheet rock." The petitioner states that her husband stole her and her daughter's belongings in order to get money to buy drugs. The petitioner explains that she asked for a restraining order against her husband in 2001 and that the "entire situation in 2001 caused great stress and depression on [sic] me. I had to be admitted into the hospital for severe depression and suicidal tendencies. I also received counseling for about three months. I continue to receive medication for depression." The petitioner explains that her husband is currently incarcerated for a drug conviction, but that she fears he will get upset with her and "go on one of his tirades" when he is released.

In her handwritten statement, the petitioner's eldest daughter confirms that the petitioner's husband used drugs and would steal their belongings. She states, "It hurt me because I saw how every night my mom cried. She had to pay all the bills by herself, cause sometimes [her husband] didn't even work." In her handwritten statement, the petitioner's youngest daughter also attests to the petitioner's husband's drug abuse and explains that his behavior made her feel sad and mad.

The January 6, 2001 incident report from the Tempe Police Department reads, in pertinent part:

[The petitioner] stated she felt uncomfortable and intimidated by her husband . . . during a verbal disagreement. [The petitioner] wanted information on domestic violence and how to obtain an order of protection against her husband. [The petitioner] stated her husband did not say anything she just felt 'uncomfortable.' [The petitioner] indicated her husband . . . was on drugs and selling all of their personal belongings for drug money. [The petitioner] also stated [her husband] has brought his drug buddies into the house. . . . It should be noted the apartment

was not disturbed and no crime had been committed or could be established. Neither [the petitioner nor her husband] had any signs of injury.

In her verified petition for an order of protection dated January 16, 2001, the petitioner states that on January 6, 2001, "The Police come to the house, because Domestic Violence my husband was in drugs [sic] damage and stole my property. He has threatened me by putting his fist thru [sic] the wall. I'm afraid for the safety of my daughters, my self and my property. He also took my car I don't know where is [sic]." The petitioner submitted a towing receipt for her car dated January 4, 2001. The petitioner obtained an order of protection against her husband on January 16, 2001, which was effective for one year.

The petitioner submitted evidence that she went to a hospital for emergency care on March 24, 2000. The examining physician stated that the petitioner reported feeling depressed and "some suicidal ideation thought she denies any impulse to act on this." The physician referred the petitioner to a behavioral health center. The physician states that he discussed the referral with the petitioner and her husband and that the petitioner's husband was going to take her to the referred center for an evaluation. The petitioner submitted documentation that she went to the hospital for emergency care again on June 9, 2001. The record from this visit indicates that the petitioner was dizzy and depressed. The examining doctor noted, "[Patient] wonders if this could be due to not taking her Paxil." The clinical impression is stated as, "Lightheadedness/vomiting suspect viral infection." However, the examining doctor noted that the exam was limited by the petitioner's "poor English." The petitioner also submitted a note dated September 30, 2004 from [redacted] who states that he has been treating the petitioner with "Paxil for depression prior to and during 2004. She also has a history of domestic violence." A letter dated October 12, 2004 from [redacted] states that the petitioner was referred to Tempe Counseling Services and met with a counselor "for one counseling session between the dates of 3/1/2001 and 6/6/2001."

In a letter dated October 25, 2001 and addressed to an attorney in Phoenix, Arizona [redacted] states that she has worked with the petitioner as a domestic violence advocate since **January 16, 2001**. [redacted] explains that she helped the petitioner obtain an order of protection and reclaim her car. [redacted] further states that she referred the petitioner to other social service agencies to obtain assistance with food, clothing, housing and legal advocacy.

The petitioner submitted records showing that her husband was convicted on April 11, 2003 in Arizona for the sale and possession of narcotic drugs relating to two events in September 2001. The court sentenced the petitioner's husband to **three years of incarceration** to be followed by three years of probation. The petitioner's sister-in-law, [redacted] states that the petitioner's husband "developed a very bad cocaine habit" and would take things from the former couple's home to buy drugs. [redacted] the petitioner's sister and brother-in-law, state that the petitioner lived with them for three months in 1999 when she separated from her husband due to his drug use and inability to keep a stable job. [redacted] the petitioner's brother and sister-

in-law, also confirm that the petitioner's husband was involved with drugs, would take the petitioner's car, and that the petitioner had to frequently move.

We concur with the director's determination that these documents do not establish the requisite battery or extreme cruelty and we do not repeat her discussion here. The present record does not demonstrate that the petitioner's husband subjected the petitioner or her children to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner states that her husband never hit her and the record contains no evidence that he battered her or her children. While the record documents the petitioner's husband's substance abuse problems and eventual conviction, the evidence does not establish that his behavior involved threatened violence against, or psychological abuse of, the petitioner or her daughters. The petitioner states that on January 6, 2001, her husband broke into her apartment and threatened her by punching a hole in the wall. However, the police report made that same day states that the apartment was not disturbed. The petitioner does not explain this discrepancy. Moreover, the petitioner and her daughters discuss in detail how the petitioner's husband stole their belongings in order to buy drugs, but they do not indicate that he did so through physical assault, threatened violence or psychological abuse directed at them. For example, the petitioner states, "every time he would do drugs he would get very angry and would start hitting the wall or things to vent his frustration." The petitioner does not further discuss her husband's actions or indicate that he directed his anger and frustration at her or her children, or would hit things while threatening her or her daughters with physical or mental injury.

The record also fails to corroborate the petitioner's statements regarding the effects of her husband's behavior on her mental health. The petitioner states that she was hospitalized for severe depression and suicidal tendencies and received counseling for about three months in 2001. However, [REDACTED] states that the petitioner attended only one counseling session between March and June of 2001. The hospital record of March 24, 2001 states that the petitioner was referred to a behavioral health center for an evaluation, but there is no evidence that the petitioner actually went to such a center. The hospital record of June 9, 2001 indicates that the petitioner was suffering from a viral infection. [REDACTED] does not state the date he began treating the petitioner for depression and does not provide any explanation for his statement that the petitioner "has a history of domestic violence." In sum, the medical records do not establish that the petitioner's health problems were attributable to her husband's battery or extreme cruelty, rather than to the stress caused by his controlled substance abuse.

On appeal, counsel contends that the evidence "clearly shows that [the petitioner] did in fact suffer extraordinarily due to her husband's drug addiction." Counsel is misguided. We agree that the evidence indicates that the petitioner and her children suffered as a result of her husband's controlled substance abuse. The issue is whether or not his addiction and related behavior involved his infliction of battery or extreme cruelty upon the petitioner or her children during their marriage. The present record fails to establish such battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

In her affidavit, the petitioner states:

I first met [my husband] around November 1994 when we worked together at a print shop. We started dating approximately two months after we met. We got married on January 21, 1996 in Las Vegas, Nevada and started living together as husband and wife. We lived happily and in peace until [my husband's] drug problem got out of control.

The petitioner does not further discuss how she met her husband, their courtship, wedding, or any of their shared experiences, apart from her husband's alleged abuse. The March 24, 2000 hospital record indicates that the petitioner's husband accompanied her to the hospital and discussed her situation with the examining doctor. The petitioner submitted a copy of the former couple's joint automobile insurance cards effective February 1 to August 1, 1999, but the policy was cancelled on May 26, 1999 for non-payment. The petitioner also submitted evidence that on January 28, 2000, her husband was listed as an excluded driver on her automobile insurance policy. As noted by the director, the petitioner submitted other documents jointly addressed to her and her husband, but these materials are all dated after the petitioner states that she and her husband separated in January 2000. The petitioner also submitted photocopies of five photographs of her husband and herself. These pictures indicate that the petitioner and her husband were together on at least two occasions, but they do not establish the petitioner's good faith in entering their marriage. The letters from the petitioner's relatives do not discuss the former couple's marital relationship or their observations of the petitioner's behavior during the former couple's courtship and marriage, apart from her separation from her husband due to his substance abuse problems.

We concur with the director's determination that the present record does not establish the petitioner's good faith marriage to her husband. On appeal, counsel simply states, "the evidence also shows that the marriage was entered I [sic] good faith and shows the amount of time that [the petitioner and her husband] spent living together." Counsel cites no specific error in the director's decision and provides no substantive reasons why we should reassess the director's determination. The present record fails to establish that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The present record does not demonstrate the petitioner's eligibility 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.