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U.S. Citizenship
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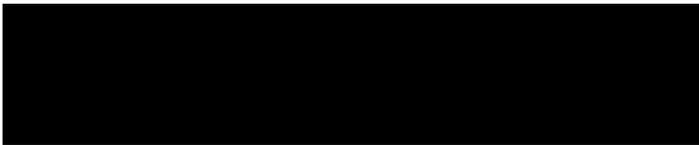


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **SEP 27 2006**
EAC 05 229 50789

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 record did not establish that the petitioner had resided with her husband or entered into their marriage in good faith.

On appeal, counsel submits a brief and additional evidence.

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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary].

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

* * *

(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 further explicated 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 . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 Kenya who entered the United States on December 11, 2001 as a nonimmigrant visitor. On October 13, 2004, the petitioner married M-B-¹, a U.S. citizen, in King County, Washington. The petitioner filed this Form I-360 on August 12, 2005. On October 19, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's residence with her husband and her good faith entry into their marriage. The petitioner, through counsel, timely responded. On January 24, 2006, the director denied the petition and counsel timely filed an appeal.

On appeal, counsel claims that the relevant evidence establishes the petitioner's requisite joint residence with, and good faith marriage to, her husband. We concur with the director's determinations. Counsel's claims and the evidence submitted on appeal do not overcome the grounds for denial of the petition. Nonetheless, the case 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

On the Form I-360, the petitioner states that she lived with her husband from March 13, 2002 until July 11, 2005 and that their last joint address was [REDACTED] in Seatac,

¹ Name withheld to protect individual's identity.

Washington. In her August 8, 2005 declaration, the petitioner states that in March 2002, she and her husband "decided to stay together and rented an apartment." However, the couple's October 10, 2004 marriage certificate states that the petitioner is from Seatac, Washington, but that her husband is from Seattle, Washington. Moreover, in her affidavit submitted on appeal and dated March 2006, the petitioner states that she did not live with her husband until after her marriage in October 2004, when she moved in with her husband at [REDACTED] Federal Way, Washington 98023. In her undated letter submitted on appeal, the petitioner's pastor, [REDACTED] states that she once visited the couple at their joint residence in Federal Way, Washington. Yet, the petitioner does not explain the discrepancies in her own statements regarding her premarital residence.

In her March 2006 affidavit, the petitioner explains that in November 2004 her husband was evicted and the couple moved in with the petitioner's daughter at [REDACTED] Seatac, Washington 98188. In response to the director's RFE, the petitioner submitted a copy of a lease agreement for this residence executed on March 1, 2004 between herself and [REDACTED] as tenants and [REDACTED] as landlord. The petitioner's husband's name has been handwritten on the photocopied lease and this alteration has not been initialized by any of the original parties to the lease. In addition, the lease is signed by the petitioner and [REDACTED], but not the petitioner's husband. In a letter dated October 26, 2005, [REDACTED] states, "It has been my understanding that your husband [M-B-], had also been a resident of this unit" Yet [REDACTED] letter does not indicate that he had personal knowledge of the petitioner's husband's residence at this address.

With her RFE response, the petitioner submitted a copy of a Comcast bill jointly addressed to herself and [REDACTED] at this address and on appeal, the petitioner submits a copy of an envelope postmarked December 10, 2004 that is addressed to [REDACTED] and was forwarded from the Federal Way, Washington address to the [REDACTED] residence. [REDACTED] is not the name of the petitioner's husband as it appears on his birth certificate or their marriage certificate. On appeal, the petitioner explains that her husband used different names such as "[REDACTED]" and "[REDACTED]" On appeal, the petitioner submits an undated change-of-address notification addressed to the petitioner's husband (using his birth name) at the [REDACTED] residence. On appeal, the petitioner also submits a copy of an automobile insurance card jointly addressed to the petitioner and her husband at the [REDACTED] residence, which was effective from December 7, 2004 to April 7, 2005.

Other relevant evidence contradicts or fails to corroborate the joint residence indicated by these documents. With her RFE response, the petitioner also submitted an automobile repair bill that is jointly addressed to the petitioner and her husband at [REDACTED] Federal Way, Washington. However, the petitioner states on appeal that the couple's first joint address was at [REDACTED]. Moreover, this bill is dated March 17, 2004, less than three weeks after the petitioner signed her lease for the [REDACTED] residence. The petitioner does not explain these discrepancies.

The unresolved discrepancies between the petitioner's statements regarding her premarital residence and the documentation of her alleged joint residential addresses with her husband detract from the

credibility of the petitioner's testimony. Consequently, the present record fails to establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In her declaration the petitioner states:

In March, 2002, I met my husband [M-B-] and started dating [sic]. We started going to church and he played the piano at church. We decided to stay together and rented an apartment. During the first year of dating [M-B-] asked me several times to marry him but I was reluctant to because he started to drink and yell at me. He always apologize [sic] to me. On October 13, 2004, we got married, everything changed [.] . . .

In her affidavit submitted on appeal, the petitioner states:

In April, 2002, I met my husband [M-B-]. We started dating and he was a sweet loving man and we use [sic] to go to church together. I am a committed Christian and felt we had something in common. He insisted on getting married and I declined because I did not want to commit to a marriage that I was unsure of. I told him that we should take more time to get to know each other better.

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 abuse. The petitioner submitted photographs of her and her husband. While the photographs indicate that the petitioner and her husband were together on four occasions, they do not independently establish the petitioner's good faith in marrying her husband.

In her letter submitted on appeal, [REDACTED] states that in 2003, the petitioner came to church with M-B-, who introduced himself to the congregation as the petitioner's fiancé. [REDACTED] explains that they continued coming to church together on Sundays and that the petitioner's husband played the piano for the church's praise and worship team. [REDACTED] further states that she once visited the couple at their alleged residence in Federal Way, Washington. On appeal, counsel cites [REDACTED] letter as evidence of the couple's "intentions of starting life a life [sic] together" because [REDACTED] united the petitioner and her husband in marriage. Counsel is mistaken. Contrary to counsel's assertion, [REDACTED] states, "[the petitioner and her husband] requested me whether [sic] I would officiate in their regal [sic] union which I had no objection [sic] but they later changed because they wanted to make it simple and they went to court house [sic]."

Apart from [REDACTED] letter, the record contains no other testimonial evidence relevant to the petitioner's good faith entry into marriage with her husband. The record contains three documents jointly addressed to the petitioner and her husband, as discussed in the preceding section: their joint automobile insurance card effective December 7, 2004 to April 7, 2005; the Comcast bill dated October 26, 2004; and the automobile repair bill dated March 17, 2004. However, the petitioner

states that she and her husband began dating in March or April of 2002 and separated on July 11, 2005, the date of her husband's arrest for assault against the petitioner. Although the couple was married for less than a year before they separated, the petitioner does not explain why further documentary or testimonial evidence of her over-three-year relationship with her husband, and her good faith entry into marriage with him, is unavailable or unobtainable.

On appeal, counsel asserts that the petitioner's husband used several aliases to hide his true identity due to his poor credit history. Yet the petitioner herself does not discuss any financial problems of her husband that prevented them from obtaining joint accounts. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The present record does not 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 petitioner failed to demonstrate her 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 Citizenship and Immigration Services (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.