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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 05 253 52689

Office: VERMONT SERVICE CENTER

Date: APR 23 2007

IN RE: Petitioner:



PETITION: Petition for 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.

Maura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director denied the preference visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as an 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 the battered spouse of a United States citizen.

On July 21, 2006, the director denied the petition, finding that the petitioner failed to establish that she has resided with the United States citizen spouse, has been battered or the subject of extreme cruelty perpetrated by her United States citizen spouse, and entered into the marriage to the United States citizen in good faith.

On appeal, counsel for the petitioner submits a brief with previously submitted evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(1)(v) states, in pertinent part:

Residence. A self-petition will not be approved [unless] . . . he or she . . . resided with the abuser . . . in the past.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

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.

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. . . . All credible relevant evidence will be considered.

According to the evidence on the record, the petitioner wed United States citizen T-M¹ on September 28, 1998 in Rockford, Illinois. On September 19, 2005, the petitioner filed a self-petition, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage.

The first issue to be addressed in this proceeding is whether the petitioner established that she has been battered by or has been the subject of extreme cruelty perpetrated by her citizen spouse. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that she has been abused by, or the subject of extreme cruelty perpetrated by her citizen spouse, the director asked her to submit additional evidence on November 7, 2005. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. The petitioner failed to respond to the request. On May 19, 2006, the director notified the petitioner of the intent to deny the petition. On June 9, 2006, the petitioner responded and indicated that she had nothing more to submit for the record except an additional statement dated January 11, 2006.

On appeal, counsel for the petitioner resubmits previously provided documentation and an updated letter from the petitioner's psychologist.

The evidence related to the petitioner's claim of abuse consists of the following:

- The petitioner's statement dated September 14, 2005.
- A statement from a friend of the petitioner dated May 14, 2004.
- A letter dated May 17, 2004 from [REDACTED] and clinical psychologist.
- A letter dated September 18, 2006 from [REDACTED] and clinical psychologist.
- The petitioner's statement dated January 11, 2006.

The evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse. In her statement dated September 14, 2005, the petitioner indicated that her husband was irritable, used alcohol and drugs excessively, drove while under the influence of drugs and alcohol and "screamed at [her] all the time." The petitioner failed to describe in detail any specific instances of abusive conduct towards her. The petitioner submitted a letter from a friend, [REDACTED], which states that the petitioner had confided in her that the petitioner's husband had verbally abused her. Again, no details of specific instances of abuse were described. In her first letter, Dr. [REDACTED] stated she provided psychological counseling to petitioner shortly after she was raped by Guillermo Pacheco, a man other than her husband. Dr. [REDACTED] further stated that "[a] year into her marriage to [T-M-, the petitioner] was reportedly subjected to repeated acts of domestic violence that included extreme emotional cruelty and spousal abandonment." Dr. [REDACTED] failed to provide details about specific instances of abuse. In response to the director's notice of intent to deny

¹ Name withheld to protect confidentiality.

(NOID) the petition, the petitioner provided her own statement dated January 11, 2006. In this statement, the petitioner stated that her husband sometimes took her money. She said that he subjected her to fear when he drove while under the influence. She said that he told her that she dressed like a whore and an old lady. She said that he was insensitive to her feelings regarding sex. She stated that sometimes while shooting darts, he would shoot one in her direction. She said that once, he punched the wall. She said that he was emotionally abusive, possessive, controlling, jealous and ridiculed her. Although the petitioner provided more examples of her husband's behavior in her second statement, she failed to describe specific instances in detail. On appeal, the petitioner submitted a letter from Dr. [REDACTED], dated September 18, 2006, which outlines the petitioner's history with her spouse. Dr. [REDACTED] stated that the petitioner was "subjected to repeated acts of domestic violence that included extreme emotional cruelty, sexual aggression, exposure to [his] alcohol and drug behaviors, including his near drug overdose. On many occasions [the petitioner] was a passenger in T-M-'s vehicle while he drove under the influence. [The petitioner] was repeatedly subjected to his angry outburst[s], to his hostile belligerent attitude, to his verbal aggression, many menacing tantrums and increasing financial irresponsibility. [The petitioner] indicated that [T-M-] obtained the INS citizen application for her shortly following their marriage but utilized it to levy control over her." Dr. [REDACTED] letters are not entirely consistent with the petitioner's statements. The petitioner did not indicate that her husband used an immigration application to levy control over her. Dr. [REDACTED] did not mention that T-M shot darts at the petitioner or punched the wall in her presence. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Finally, Dr. [REDACTED] failed to provide details about specific instances of abuse.

Accordingly, the petitioner has not established that she was battered by, or subjected to extreme cruelty by, her U.S. citizen spouse during the marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The next issue to be addressed in this proceeding is whether the petitioner established that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. The petitioner failed to respond to the request for additional evidence. The director raised the issue again in a NOID. In response to the NOID, the petitioner submitted a second statement. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith. The petitioner provided the following evidence, which she asserts establishes her good faith marriage:

- The petitioner's statements.
- An e-mail confirmation for a roundtrip airplane ticket for the petitioner to travel from Los Angeles on December 13, 2002 and return on February 12, 2003.
- A letter from the petitioner's employer stating that the petitioner is married to T-M- and his name is listed on a life insurance enrollment request dated May 28, 2003 and an undated confidential employee census form.

- Miscellaneous items showing addresses for the petitioner and her spouse.

The petitioner indicated in her statement that she met T-M "around May 1998," had their first date in June 1998, and starting living together several months prior to their September 1998 marriage. She provided no details about the wedding celebration or ceremony. She provided scant details about their courtship or shared experiences. She did not discuss her motivations for marriage.

On the Form I-360 she states that they lived together from December 2002 to January 2003.

According to the life insurance enrollment request, the petitioner and her husband were residing together at [REDACTED] Illinois as of June 1, 2003, six months after the petitioner indicated that they had quit living together. *See Matter of Ho, supra.*

Accordingly, the petitioner failed to establish that she entered into the marriage in good faith as required by the regulation at 8 C.F.R. § 204.2(c)(2)(vii).

The third issue to be addressed is whether the petitioner established that she resided with her spouse during the marriage. The record contains scant evidence to demonstrate that the petitioner had resided with her citizen spouse. The evidence relating to joint residence consists of the following:

- The petitioner's statements.
- A request for life insurance enrollment dated May 28, 2003, indicating that the petitioner and her spouse both resided at [REDACTED], Illinois.
- Correspondence from and to the petitioner dated December 2002 at [REDACTED] Gardena, California.

The evidence relating to joint residence is insufficient. She provided little evidence of joint residence. Much of the evidence is inconsistent. The petitioner indicated in her statement that she resided with her spouse at his sister's house until November of 1998 at which time his sister threw them out. The petitioner stated that she last resided with her spouse in Rockford, Illinois in January 2003, yet she submitted additional evidence indicating that she and her spouse shared residences in Belvedere, Illinois as of June 2003. These inconsistencies detract from the credibility of the petitioner's assertions. *See Matter of Ho, supra.*

Accordingly, the petitioner has failed to establish that she resided with her spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.