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U.S. Citizenship
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Services

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Office: VERMONT SERVICE CENTER

Date: JAN 09 2007

EAC 06 002 50028

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

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 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:

(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 the Slovak Republic who entered the United States on October 26, 1992 as a B-2 nonimmigrant visitor. On March 13, 2002, the petitioner married [REDACTED] a U.S. citizen, in Skokie, Illinois.¹ The petitioner filed the instant Form I-360 on September 28, 2005.² On December 5, 2005, the director requested additional evidence of the petitioner's claimed abuse, good moral character, and good faith marriage. The petitioner responded to the director's request for evidence (RFE) on February 6, 2006. On March 3, 2006, the director issued a Notice of Intent to Deny

* Name withheld to protect individual's identity.

¹ Although not at issue in this case, the record also contains a Form I-130, Petition for Alien Relative, filed by the petitioner's spouse in the petitioner's behalf and a Form I-485, Application to Adjust Status. The Form I-130 petition and the Form I-485 application were denied on June 14, 2005.

² The director mistakenly indicated that the petition was filed on September 28, 2006.

(NOID) indicating that the petitioner failed to establish a claim of abuse and that she entered into her marriage in good faith. The petitioner responded to the NOID on May 2, 2006. After reviewing the evidence contained in the record, including the evidence submitted in response to the RFE and NOID, the director denied the petition finding, that the petitioner failed to establish 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 and brief.

Upon review, as will be discussed, we concur with the director's determinations regarding the petitioner's claim of abuse and good faith marriage and find that the petitioner has failed to overcome these determinations on appeal.

Battery or Extreme Cruelty

In the personal statement submitted at the time of filing, the petitioner claimed that her spouse did not like to socialize with people, did not work consistently, would not eat regularly, and was "moody." She states that he would scream and yell and appeared to be under the influence of drugs but does not provide any specific examples or details regarding any particular incident or the frequency of these incidents. The petitioner also claimed that her spouse would sometimes disappear for days at a time until one day in December 2003 he left and never returned. The petitioner does not indicate that her spouse ever threatened her with violence, was ever physically abusive or that his outbursts were directed at the petitioner.

The statement submitted by [REDACTED] and [REDACTED] states generally that they could see in the petitioner's "behavior that the marriage was not working," but do not provide any further details to establish the petitioner's claim of abuse.

The petitioner also submitted a psychosocial assessment from [REDACTED] LCSW, CADC, prepared after three sessions with the petitioner. In the assessment, Ms. [REDACTED] reasserts the claims made by the petitioner in her personal statement regarding her spouse's purported drug use and absences from the home and, in addition, indicates that the petitioner's spouse would "become explosive and scream[] at [the petitioner] while under the influence of drugs." Ms. [REDACTED] does not provide a description of any particular incident in which the petitioner's spouse became explosive and screamed and fails to indicate whether the purported outbursts were frequent or whether they happened on infrequent occasions.

In response to the director's RFE, the petitioner provided no further evidence but offered counsel's assertion that the petitioner was a victim of her spouse's misrepresentations and that he "intended to manipulate her and take advantage of her." Similarly, while the petitioner offered no further evidence in response to the NOID, counsel submitted a statement, arguing that the director's characterization of the petitioner's spouse's behavior was "highly simplified and wholly inaccurate"

The petitioner provided a "Daily Activities Telephone Report" from the Illinois Department of Human Services Office of Rehabilitation Services, Disability Determination Services (DDS) which was

prepared by the DDS as a summary of the telephonic conversations with the petitioner about her spouse. Counsel does not highlight the significance of this document. Presumably as evidence of the petitioner's spouse's inability to work. The report states:

He seems angry all the time but he does not turn his anger towards his wife. But it is not uncommon to hear him scream. He does not get physically destructive.

On appeal, counsel argues that the director "seems to rely on the assumption that the conduct of the Petitioner's spouse should be discounted for the reason that the Petitioner was exposed to tragic events in her life." Counsel's argument appears to be based upon the director's following statements:

The abuse and/or extreme cruelty must have been perpetrated against [the petitioner] by [the] United States citizen spouse. It appears that your depression is not only caused by your spouse's drug addiction and abandonment, but also the cumulative event throughout your life.

A review of the evaluation shows that, as correctly described by the director, the evaluation contained a discussion of all facets of the petitioner's life and concluded with a diagnosis with references to the petitioner's issues with her previous marriage, her son, her daughter, her mother, financial issues, health issues, and her citizen spouse. The fact that the director indicated that claims of abuse perpetrated against the petitioner by persons other than the petitioner's citizen spouse minimized the petitioner's behavior is without merit. Section 204(a)(1)(A)(iii) of the Act requires that the abuse be perpetrated by the petitioner's spouse. As abuse by third parties is not sufficient to establish the petitioner's eligibility, we find no error in the director's notation that abuse other than that perpetrated by the petitioner's spouse will not be considered in establishing the petitioner's eligibility.

Additionally, counsel argues that the director failed to "weigh the statement of closed [sic] friends that related their personal observances as to the changes in the demeanor and continence [sic] of the petitioner." We do not find this argument to be persuasive. While we agree that the director failed to consider the statement from the petitioner's acquaintances in relation to her claim of abuse, as discussed above, the statement offers no probative value in establishing the petitioner's claim of abuse. The statement indicates only that the petitioner seemed depressed and "hardly show[ed] any happiness." The statement offered no indication that the petitioner was depressed because of her spouse's behavior and does not describe their knowledge of any of the petitioner's spouse's behavior. As such, the director's failure to discuss the contents of the letter and to assign it any value was not erroneous.

Finally, counsel argues that the director failed to cite the authority for which it based its decision and failed to consider the petitioner's case on "its own particular and individual factual circumstances." We are not persuaded by either of these arguments. While the director did generally reference decisions of the AAO, the director's decision was not based upon any specific AAO ruling. Instead, the director's decision was based upon the specific facts of the petitioner's case and a thorough discussion of

individual pieces of evidence and the statements submitted in support of the petition.

As discussed above, based upon the general claims contained in the petitioner's statements, the petitioner has failed to establish that she was battered by or subjected to extreme cruelty by her spouse. The petitioner made no claim regarding being threatened with or subjected to actual physical abuse. The claims that her spouse was addicted to drugs, that he demanded money, had outbursts, and abandoned the petitioner is not sufficient to establish that she was subjected to extreme cruelty. First, as previously noted, the petitioner makes no claim in her personal statements that she was constantly pressured to give her spouse money. Second, in contrast the claim contained in the psychological assessment that her spouse would yell at her, the petitioner's own statement to the DDS indicated that he never turned his anger towards his wife, though it was not uncommon to hear him scream. This finding has not been overcome by counsel's general statements on appeal. Accordingly, the petitioner has failed to establish that she was battered by or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Marriage

In the statement submitted by the petitioner at the time of filing, the petitioner indicated that she met her spouse in November 2001 and dated for four months before getting married. The petitioner offered no other description of her courtship, her relationship with her spouse, or her reasons and feelings when she married her spouse. While the petitioner also indicated that her spouse initially moved into the apartment already being leased by the petitioner, the petitioner does not describe any other factors related to her good faith marriage, such as whether she and her spouse shared a joint account, obtained insurance together, owned or leased automobiles together, shared utility bills, or filing taxes together while married. Although the petitioner submitted a lease for an apartment at [REDACTED] Floor 2 from August 2003 until July 2004, the lease is not dated and is not signed by the petitioner's spouse. Moreover, given the petitioner's indication that she stopped residing with her spouse in August 2003, the signing of a lease after their separation is of little probative value.

Although the petitioner submitted an unsworn statement from acquaintances, the statement contains little probative information regarding the petitioner's good faith marriage. The statement from [REDACTED] and [REDACTED] indicates that they were present at the petitioner's marriage and that she was happy and in love with her husband. The Pulacz do not provide any details regarding the petitioner's relationship with her spouse either before or after her marriage and do not indicate how they came to conclude the petitioner's feelings for her spouse.

In addition, the petitioner submitted copies of several uncaptioned photographs of the petitioner and her spouse on what appear to be three separate occasions. While the photographs are evidence that the petitioner and her spouse were together at these particular places and times, they do not establish the petitioner's good faith intent in marrying her spouse. Further, the submission of photographs of only three occasions over the course of the petitioner's claimed nearly two year relationship offers little probative value in establishing a claim of a good faith marriage.

While the petitioner offered no further testimonial or documentary evidence to support her claim of a good faith marriage in response to the director's RFE and NOID, counsel submitted general briefs each time asserting that the evidence was sufficient to establish the petitioner's eligibility. As it relates to the petitioner's claim of a good faith marriage, counsel points to the unsworn statement of the petitioner's acquaintances, the joint lease, and the previously filed Form I-130 and argues that "[t]he absence of further documentation is not the result of a lack of good faith on the part of the petitioner." While we concur with counsel that a petitioner's failure to produce affirmative evidence of the bona fides of the marriage, by itself, is not sufficient to establish that the marriage is a sham marriage and was entered into in order to evade the immigration laws, the director made no finding of marriage fraud.³ Rather, the director found that petitioner had failed to meet her burden and to establish that the marriage was entered into in good faith.

Upon review, we concur with this finding. As discussed above, the petitioner's statements and the statement of her acquaintances contain minimal information regarding the petitioner's relationship with her spouse both before and after her marriage and the only documentary evidence consists of a lease that is undated and not signed by the petitioner's spouse. While there may be an explanation for the lack of documentation demonstrating a commingling of assets and liabilities, the petitioner has failed to describe any shared accounts, finances, insurance, or taxes, much less provide any explanation for the lack of documentary evidence. The remaining evidence noted by counsel, the Form I-130 filed in the petitioner's behalf is not persuasive evidence of the petitioner's intent in marrying her spouse.

On appeal, counsel summarizes the statements made by the petitioner in her personal statement and argues that the director did not "challenge the legality of the [petitioner's] marriage" and failed to consider the petitioner's particular circumstances with a spouse who did not "readily participate[] in the marriage when making a determination regarding the petitioner's good faith marriage." We do not find counsel's argument to be persuasive. First, the *legality* of a marriage is not indicative of whether the petitioner entered into the marriage with a bona fide intent. Second, while counsel argues that the petitioner's "abusive circumstances require a broader view of human nature" and that the "purchase of life insurance, automobiles, banking ties all assume financial ability that might not exist," the record does not contain any statement from the petitioner regarding her spouse's unwillingness to share finances and commingle assets and liabilities. While counsel asserts that this financial ability "might not exist," the petitioner herself has made no claim that the reason she has no documentary evidence is because she or her spouse lacked the financial ability to open joint accounts and share financial responsibilities. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The key factor in determining whether a person entered into a marriage in good faith is whether he or

³ Compare the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B), and (D), with the regulation at 8 C.F.R. § 204.2(a)(1)(ii).

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 scant testimonial and documentary evidence provided, the petitioner has failed to establish that she entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.