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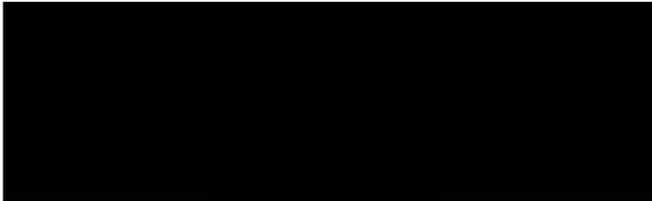
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9



FILE:

EAC 07 015 50745

Office: VERMONT SERVICE CENTER

Date:

APR 01 2009

IN RE:

Petitioner:



PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.

n F. Grissom
Acting 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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her lawful permanent resident husband.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident 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).

On October 5, 2007, the director denied the petition, finding that the petitioner failed to establish that she had resided with the claimed abuser, that she had been subjected to battery or extreme cruelty by her spouse, and that she had entered into the marriage in good faith. On appeal, the petitioner submits an additional statement and an affidavit indicating that her previous attorney asked her very few questions and did not explain or ask for in depth information. Preliminarily, the AAO finds that the petitioner has submitted additional information on appeal and in response to the director's detailed request for further evidence. She has not submitted an affidavit and supporting documentation claiming that she was prejudiced by her prior counsel's handling of the matter. Although the AAO concurs with the director's determination in this matter, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director must issue a NOID on the issues of the petitioner's residence with the claimed abuser, the abuse perpetrated by the petitioner's spouse, and the petitioner's good faith entry into the marriage.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), 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 of Homeland Security].

The eligibility requirements are also explained 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.

(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 . . . spouse, 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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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.

(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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Viet Nam. She married T-V-,¹ a United States lawful permanent resident, on October 16, 1999, in Viet Nam. The record contains a Form I-134, Affidavit of Support, dated June 20, 2003 submitted by T-V- on behalf of the petitioner. The record includes a copy of pages of the petitioner's passport showing she was issued a United States V-1 visa in Ho Chi Minh City, Viet Nam on October 21, 2003 with a priority date of April 4, 2000. The record also includes the petitioner's Form I-94, Departure Record, showing that she entered the United States on November 1, 2003 in a V-1 classification. The record further includes the petitioner's Form G-325A, Biographical Information, dated August 7, 2006 listing the petitioner's address as [REDACTED] in Alabama from November 2003 to March 2004. The record contains the petitioner's Vietnamese marriage certificate reflecting a marriage between the petitioner and T-V- in Viet Nam on October 16, 1999 and a divorce decree issued in Coffee County, Alabama granting T-V-'s complaint for divorce on September 21, 2005.

¹ Name withheld to protect individual's identity.

Residence

The petitioner provides a June 28, 2007 personal statement wherein she stated that she married T-V- in October 1999 and that a certificate of marriage was issued December 1, 1999 and:

After [a] few years later I came to the United States to live with him. After [I] came to the U.S., I lived with him and his parents and his sister. He seem[ed] not to be excited, or happy to see me, because he had another girlfriend, as a matter of fact they lived together at his parent's house after [I] got there. Not too long he broked [sic] up with the girlfriend, and met with other different girls from Atlanta and moved up there to lived [sic] with her, and I stayed with his parents. Him and I don't have any joint bills or anything together, because he was to [sic] busy with somebody else. . . . He kept going back and forth to Atlanta with a girlfriend After [a] few months [I] wanted to moved [sic] out, because[I] don't want to live with them anymore.

In an undated statement submitted on appeal, the petitioner indicates that upon her arrival in America she knew something was not right and “[t]wo days after my arrival he [T-V-] left.” The petitioner states that her in-laws told her that T-V- had a girlfriend that had lived in the house almost a year. The petitioner states that T-V- would come home and bring his girlfriend with him.

The record also includes the June 27, 2006 affidavit of the petitioner's friend, [REDACTED] who states that she has personal knowledge of the marital relationship between T-V- and the petitioner over the period of November 1, 2003 to September 21, 2005 and that they lived together in a marital relationship in their marital residence as husband and wife at the [REDACTED] address.

Based upon the petitioner's statements it does not appear that the petitioner and T-V- ever lived together as husband and wife and although T-V- would visit the home of his parents, he did not stay with the petitioner as her husband. The affidavit of [REDACTED] is not probative in this matter, as her statements conflict with that of the petitioner. The petitioner stated that T-V- left two days after she arrived and then visited periodically. In addition, the petitioner stated that she moved out of the [REDACTED] address a few months after arrival, a time period that coincides with the information she provided on her Form G-325A. The AAO finds that the petitioner has not established that she resided with T-V- in the United States.

The AAO has also reviewed the petitioner's statements regarding T-V-'s visits to Viet Nam to determine whether the statements contain sufficient information to determine that the petitioner and T-V- resided together in Viet Nam. The petitioner indicates only that T-V- visited Viet Nam in December 2000, when he and the petitioner signed their official marriage license, and stayed for 45 days. The statements made by the petitioner are insufficient to substantiate that T-V- resided with the petitioner while in Viet Nam. The AAO finds that the petitioner has not established that she resided with T-V- in Viet Nam.

Upon review of the totality of the evidence in the record, the petitioner fails to provide any probative testimonial evidence that she jointly resided with her spouse. Accordingly, the petitioner has not satisfied the criteria at 8 C.F.R. § 204.2(c)(1)(v).

Battery or Extreme Cruelty

The AAO has reviewed the petitioner's personal statement in which she related how T-V- did not live with her but lived with different girlfriends and a transsexual. The petitioner indicated that T-V-'s parents and sister did not have any respect for her and told her she would have to pay room and board. The petitioner also indicated that T-V-'s sister told her that she would be thrown back to Viet Nam and that this made the petitioner frustrated and scared. She claimed that if she went back to Viet Nam her parents would lose face and it would be hard for her to start over again. The petitioner stated that is why she tried to kill herself in March 2005, just to get it all over with. On appeal, the petitioner elaborates on the mistreatment she received at the hands of T-V-'s parents and sister. She indicates that when she asked her in-laws about her immigration paperwork they told her they had cancelled it and that is when she attempted suicide. The record includes medical reports of the petitioner's hospital stay for two days in March 2005 and the diagnosis that she had swallowed several Tylenol and aspirin tablets. The AAO has also reviewed the two evaluations that are part of the record. The evaluation dated June 15, 2006 noted that the petitioner had difficulty falling asleep and worried about her future after her husband's abandonment. The clinical coordinator who prepared the report indicated that the petitioner experienced distress about the stigma of being divorced and returned to her family in Viet Nam. A second evaluation based on a 60 minute exam on June 26, 2007 by a licensed clinical psychologist provided the diagnosis that the petitioner experienced adjustment disorder with anxious mood and found that the petitioner was basically fearful of not being able to continue to live in America.

The petitioner does not allege that T-V- committed battery but rather that he subjected her to extreme cruelty by his failure to engage in the marriage and by his eventual abandonment. However, abandonment does not constitute extreme cruelty. The breakup of an apparent forced marriage, although sad and unfortunate, is not abuse as intended by Congress when enacting this legislation. The petitioner's statements fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that T-V-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. As described, T-V-'s actions, while maybe unkind and inconsiderate, do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

Upon review of the evaluations submitted on the petitioner's behalf, the AAO finds that the reports do not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's adjustment disorder and anxious mood. The reports do not provide chronological, clinical, or substantive details of the abuser's alleged abuse and the underlying cause appears to be that of abandonment and embarrassment. The evaluations are insufficient to demonstrate that the

circumstances of the petitioner's involvement with T-V- constituted extreme cruelty

The AAO has also reviewed the petitioner's statements regarding her treatment by her in-laws; however, the petitioner has not established that her former spouse directly instigated or was otherwise the proximate cause of the alleged abuse. Both the statute and the regulation require that the abuse be perpetrated against the petitioner *by his or her spouse*, not a third party. See Section 204(a)(1)(A)(iii)(I)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb), 8 C.F.R. § 204(c)(1)(vi).

The AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty.

Good Faith

The AAO has also reviewed the petitioner's personal statement submitted on appeal to establish that she entered into the marriage in good faith. The petitioner's initial statement does not provide any background information relating to her introduction or the couple's courtship. The petitioner on appeal indicates that she met T-V- through family who indicated that T-V-'s family was looking for a suitable match for their son. She notes that initially she and T-V- began a phone correspondence and they learned they had much in common. The petitioner indicates that in March 1999, T-V- came to Viet Nam to visit and they went on dates and that T-V- was romantic and sweet. The petitioner states that during this visit T-V- proposed and she accepted. The petitioner indicates further that in October 16, 1999 they had a large wedding in Viet Nam. The record includes photographs of the wedding. She also states that she was so happy as her dream of a family with the man she loved had come true. The petitioner reports that in December 2000 T-V- returned to Viet Nam for a 45-day visit and told her to be patient regarding the paperwork for her entry into the United States. The petitioner indicates that T-V- told her he was saving for a house and that she believed him and waited.

The record includes photographs of the wedding ceremony, a wedding invitation, and three photographs of the couple in causal clothes. However, the photographs and wedding invitation although documenting a wedding and a one-time interaction, do not demonstrate the petitioner's good faith in entering her relationship with T-V-. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence also fails to support a finding that she entered into the relationship with T-V- in good faith. The petitioner provides general information regarding what appears to be an arranged marriage and does not provide the necessary detail to establish her intent upon entering the marriage. There are insufficient probative details about the petitioner's initial relationship with T-V- and the subsequent interactions with T-V- that allow a conclusion that the petitioner entered into the marriage in good faith. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her relationship with T-V- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the

director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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 director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.