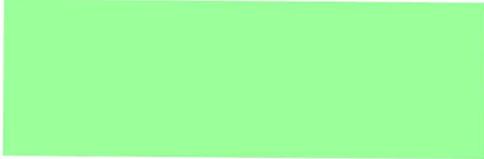


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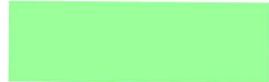


**U.S. Citizenship
and Immigration
Services**

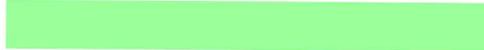


DATE: **JUN 29 2013** OFFICE: VERMONT SERVICE CENTER

FILE:



IN RE: Petitioner:



PETITION: Petition for Immigrant Abused 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) 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 immigrant classification 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith and that they resided together.

On appeal, counsel reasserts the petitioner’s eligibility and submits additional evidence.

Relevant Law and Regulations

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 further 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 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 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Brazil who entered the United States on [REDACTED] 1997, as a nonimmigrant visitor. The petitioner married a U.S. citizen on [REDACTED] 2003 in Orlando, Florida. The petitioner filed the instant Form I-360 on August 7, 2006. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage and her joint residence with her spouse. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial. Nonetheless, the case must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (as in effect at the time the petition was filed).

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her undated statement, the petitioner briefly recounted that she met her husband in May 2002 and they dated for one year before getting married in June 2003. The petitioner did not describe how she met her husband, their courtship, engagement, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner initially submitted the following relevant documentation: two bank statements in her name only with her husband listed as the POD or Payable on Death beneficiary; a letter addressed to the petitioner and her husband regarding the issuance of two credit cards; a car insurance policy in the petitioner's name only with her husband listed as an excluded driver; a cable bill in her husband's name only; and unsigned, joint federal tax returns for herself and her husband for the years 2004 and 2005. In response to the RFE, the petitioner submitted an IRS transcript for the 2005 joint tax return and credit card statements in her name only. These documents show that the petitioner and her husband jointly filed one tax return and had one joint credit card account.

In response to the RFE, the petitioner submitted brief, two-sentence, letters from her friends, [REDACTED] and [REDACTED]. On appeal, the petitioner submits another brief, two-sentence, letter from her friend, [REDACTED]. The petitioner's friends attest to knowing the petitioner and her husband as a married couple, but they do not describe any particular visit or social occasion with the couple or otherwise provide detailed information establishing their personal knowledge of the relationship.

On appeal, counsel refers to the petitioner's evidence and asserts that it demonstrates the petitioner's good-faith marriage. A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. In her statement, the petitioner does not describe her courtship with her husband, their wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse. None of the petitioner's friends discuss their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. The relevant documents only show that the petitioner and her husband jointly filed one federal income tax return and had one joint credit card account. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The director also correctly determined that the record fails to demonstrate that the petitioner resided with her husband. In response to the RFE, the petitioner stated that she resided with her husband from July 2003 until July 2006 and that during this period their address was at an apartment on [REDACTED] in Orlando, Florida. The above noted documentation, including bank statements, car insurance policy, cable bill, IRS transcript and credit card statements contain the [REDACTED] address. However, as discussed by the director, the petitioner submitted police reports for her husband's traffic violations that list his residence as [REDACTED] in Kissimmee, Florida. On appeal, counsel asserts that the address listed on the police reports was taken

during traffic stops from the petitioner's husband's suspended driver's license. Counsel states that the petitioner's husband could not update his address on his license because it was suspended. Counsel, however, has not submitted any evidence to support his assertion. 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 record, in fact, indicates that the petitioner's husband's address was, at least on one occasion, self-reported, and not just taken from his suspended driver's license. An arrest warrant in the record shows that when the petitioner's husband was arrested on [REDACTED], 2003, he self-reported his address as [REDACTED] in Kissimmee, Florida.

On appeal, counsel also contends that the record contains a police report related to an incident of violence against the petitioner, which demonstrates that she resided with her husband. The record contains two incident reports, dated [REDACTED] 2006 and [REDACTED] 2007, respectively. The first incident report contains a narrative that reflects the petitioner went to the police station to report that several days earlier her husband had threatened her with a small pocket knife in the parking lot of a convenience store. The second incident report reflects that the petitioner turned in a handgun she claimed belonged to her husband. Although these reports demonstrate violence in the relationship, neither of them provides any detailed information to establish the couple's joint residence.

The petitioner in her own statement does not describe her home with her husband or their shared residential routines in any detail, apart from the abuse. The three brief letters from the petitioner's friends also do not describe any visit to the couple's residence. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

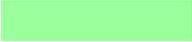
We concur with the director's determination that the petitioner has not demonstrated that she entered into the marriage in good faith and resided with her husband. Accordingly, based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Despite the petitioner's ineligibility based on the present record, this case must be remanded to the director for issuance of a NOID in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address the grounds for the intended denial of the petition.

As always 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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable

(b)(6)



Page 6

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.