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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 06 2005

IN RE:

Petitioner:

Beneficiary:

[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:

[REDACTED]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of the Dominican Republic who is seeking 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 the battered spouse of a United States citizen.

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

The petitioner, through counsel, files a timely appeal.

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)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been

the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner married her United States citizen spouse on January 24, 1987 in Rio Piedras, Puerto Rico. On April 10, 2001, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. On June 11, 2003, the instant self-petition was filed by the petitioner 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. In a decision dated December 6, 2004, the director denied the petition, finding that the petitioner failed to establish that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and that she entered into the marriage in good faith.

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, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

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.

Further, the regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

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 abused 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.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that she entered into the marriage to the citizen in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2)(ix) states:

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.

With the initial filing, the petitioner submitted two statements from friends, a copy of the petitioner's birth certificate with translation, a copy of the petitioner's employment authorization and social security cards, a copy of her spouse's Puerto Rican birth certificate, and a copy of the petitioner's divorce from her first spouse with a translation.

The director found this evidence to be insufficient to establish her eligibility and requested the petitioner, on May 26, 2004, to submit further evidence. On July 26, 2004, petitioner's counsel responded to the director's request for evidence with a request for additional time. The director granted the counsel's extension request on August 18, 2004. On September 13, 2004, the petitioner provided the director with a letter from a social worker, dated July 7, 2004. Additionally, the petitioner submitted police clearances from the city of Perth Amboy, New Jersey and New York, New York. The petitioner, through counsel, indicated that "further documentation" would be submitted "in the near future."

No further documentation was submitted, and the director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including the evidence furnished in response to the request for additional evidence. The discussion will not be repeated here.

On appeal, counsel states that the statements contained in the record from the petitioner's friends and from the social worker were sufficient evidence for the director to "conclude that [the petitioner] was a victim of domestic violence of a bona fide relationship." Counsel further claims that the director "acted in an unreasonable, arbitrary and capricious manner in denying" the petition and that the director has "unreasonably placed the victims [sic] burden at an unattainable level that would require said petition to be denied regardless of any proof or documentation submit on [the petitioner's] behalf."

Upon review of the record, we are not persuaded by counsel's arguments and find the evidence contained in the record is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse or that she entered into the marriage in good faith.

As it relates to the petitioner's claim of a good faith marriage, the record consists of the petitioner's marriage license and the two statements from acquaintances of the petitioner.

The petitioner failed to submit insurance policies in which she or her spouse is named as the beneficiary. She failed to submit bank statements, tax records and other documents that show she shared accounts and other responsibilities with her spouse. She failed to submit evidence of joint ownership or rental of property. The affidavits provided contain scant information about the petitioner and her husband's married life.

On appeal, counsel contends that the statements submitted on the petitioner's behalf are adequate to establish the petitioner's good faith marriage. We do not agree. The statements contained in the letters make general statements such as, "[The petitioner] is married to [REDACTED] that 'they married in Puerto Rico,' and that 'like any normal couple they married because they loved each other but marital problems developed.'"

Neither letter gives any detail about how the petitioner met her spouse or how long they were together before they married. Further, neither writer indicates that they attended the marriage, that they visited the petitioner or saw her together with her spouse at any time, or provides any other details regarding the petitioner's marriage. Although one of the statements indicates that the petitioner "lost many important documents" in a hurricane, there is no indication as to what the purported documents were or why the petitioner was not able to get new copies of the documents.

We note that the petitioner fails to provide any statement of her own which would indicate her intent in entering the marriage or that her marriage was otherwise bona fide.

As it relates to the petitioner's claim of abuse, the record contains a letter from a social worker. The letter indicates that the petitioner first began treatment in July 2003, more than one month after the filing of the petition, and that "to the best of [her] knowledge, the principal reason for [the petitioner's] need for treatment is the amount of physical and emotional suffering she endured while living with her husband . . ." The social worker does not describe the claimed "physical and emotional suffering" and provides no details regarding specific incidents of abuse.

Further, only one of the letters from the petitioner's friends remotely suggests that they were any difficulties in the petitioner's marriage. The letter, written by [REDACTED] states:

[The petitioner] spoke to me about emotional and physical abuse inflicted on her by her husband. He would always use the fact that she was here illegally against her. He would threaten her with deportation whenever they would argue. She was fearful and had to succumb to his treatment of her.

Ms. [REDACTED] does not indicate that she was a witness to the abuse or provide any specific details about the incidents of the claimed physical and emotional abuse. The second letter contained in the record, written by [REDACTED] does not mention any abuse and states only that "they encountered marital difficulties."

Finally, the record lacks any statement from the petitioner detailing the claimed abuse, despite the fact that the director specifically requested the petitioner to submit a "specific and detailed" statement, "in [her] own words describing the relationship with [her] abuser."

Accordingly, we find the record insufficient to establish that the harm suffered by the petitioner rose to the level of abuse or extreme cruelty and that she entered into the marriage in good faith.

ORDER: The appeal is dismissed