



U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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FILE: [Redacted]
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Office: Vermont Service Center

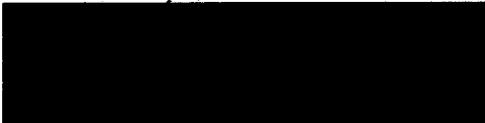
Date: NOV 29 2000

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Public Copy

APPLICATION: 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)

IN BEHALF OF PETITIONER:



Identifying data deleted to
prevent clearly unwarranted
disclosure of privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Japan 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 determined that the petitioner failed to establish that she: (1) 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; (2) is a person of good moral character; and (3) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner demands that her self-petition be granted because she is a person with good moral character, she entered into the marriage with her U.S. citizen spouse in good faith, she is the victim of extreme mental cruelty, and she would suffer extreme hardship if removed. Counsel submits additional evidence subsequent to the appeal.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) 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;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

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

The record reflects that the petitioner entered the United States with an F-1 student visa on November 7, 1994. The petitioner married her United States citizen spouse on January 15, 1999 at Maui, Hawaii. On May 17, 1999, a 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 U.S. citizen spouse during their marriage.

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 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) provides:

[T]he 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

(i) 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) 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 abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. That discussion will not be repeated here. He noted, however, that the psychological report from [REDACTED] and the psychological evaluation from [REDACTED] both state that the petitioner is reeling from the effects of the breakdown of her marriage and not from the effects of domestic violence, and that the affidavits from the petitioner, from her parents, and from her friend, support this conclusion. The director further noted that the cassette tape of a message left by her husband on her answering machine, and her perception of being threatened, are not supported by the evidence discussed. Nor was there evidence submitted to support the petitioner's statement that the police were contacted regarding her fears and concerns.

On appeal, counsel submits another statement from the petitioner similar to other statements previously furnished and addressed by the director; the psychological evaluation from [REDACTED] and a statement from the petitioner's father previously furnished and addressed by the director; a police report dated March 21, 2000; and a statement from [REDACTED] friend of the petitioner. Subsequent to the appeal, counsel submits a copy of an article, "Sexual Politics," regarding women in Japan.

The police report dated March 21, 2000, states that on March 10, 2000 at 0030 hours, the victim (petitioner) received an answering machine message from her husband stating that "if she did not

return his phone call he would find her. Vict[im] stated she felt threatened by the phone call." The report further states that a courtesy report was taken, and the victim was advised that a report should be made in West Hollywood. There is no evidence that such a report was made. Further, it is noted that although the message on the answering machine was left by the petitioner's spouse on March 10, 2000, the police was not contacted until eleven days later. There is no evidence that the petitioner's spouse pursued the claimed threat subsequent to his message. Further, it is not clear why it would be a threat for the petitioner to return her spouse's telephone call. While counsel on appeal claims that the petitioner's spouse "continues to call and threaten" the petitioner, there is no evidence furnished, other than this one incident of March 10, to establish counsel's claim.

The statement from John DePatie failed to establish that he knew sufficient details regarding any incidents of abuse or extreme cruelty other than what was related to her by the petitioner. [REDACTED] stated, "I did not witness any of the events...." This statement is, therefore, insufficient to support a claim that qualifying abuse occurred.

The article on "Sexual Politics" relates to the abuse of women in Japan. Counsel, however, has not explained how this article relates to the petitioner, or whether the fact that the petitioner is Japanese will subject her to such abuse or violence.

Further, as noted by the director in his decision that both psychological reports state that the petitioner is reeling from the effects of the breakdown of her marriage and not from the effects of domestic violence, and as claimed by the petitioner in her statement that "after Craig left I was in a state of Shock," it appears that the petitioner's depression was the result of her spouse's abandonment of the marital relationship. "Abandonment," however, is not included in, nor does it meet, the definition of qualifying abuse as provided in 8 C.F.R. 204.2(c)(1)(vi).

As provided in 8 C.F.R. 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." Neither the evaluators nor the affiants found that the claimed abuse perpetrated toward the petitioner by her spouse was "extreme." The petitioner has failed to establish that she was battered by or was the subject of "extreme cruelty" as contemplated by Congress, and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more

months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

The director determined that the petitioner neither furnished nor addressed his request of June 11, 1999 to submit evidence of her good moral character. Examples of evidence the petitioner may submit to establish good moral character under 8 C.F.R. 204.2(c)(2)(v) was listed by the director in his request for additional evidence.

On appeal, counsel asserts that the petitioner "has no criminal convictions and hence is a person of good moral character because she has obeyed all of the laws of the United States." Statements by counsel, however, are not evidence. Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). While counsel states to "see the attached affidavits attesting to [redacted] moral character," no affidavit has been received in the record of proceeding. The petitioner has failed to submit a local police clearance or a state-issued criminal background check. Nor did she submit a self-affidavit attesting to her good moral character.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

Because the petitioner furnished no evidence to establish that her removal to Japan would be an extreme hardship to herself, she was requested on June 11, 1999 to submit additional evidence. The director listed examples of factors to be considered in determining whether her removal from the United States would result in extreme

hardship. He noted that in response, the hardship issue was addressed in the report submitted by [REDACTED]. He indicated that although her report concludes that the petitioner would suffer great mental and emotional and economic hardship if deported, she did not indicate any need for additional therapy and states only that all of the petitioner's efforts to develop her musical talent here in the United States would be undone. The director concluded that such hardships are not considered valid for immigration purposes.

On appeal, counsel asserts that the petitioner's extreme hardship includes the need for access to U.S. criminal justice system in order to obtain and enforce protection orders from her husband's continual threats, and the need for U.S. counselors to help her work through the consequences of her extreme mental abuse. Counsel states:

Specifically, [REDACTED] has been speaking with detective [REDACTED] of the West Hollywood Sheriff's department regarding her police report made in March 2000 due to [REDACTED] threatening phone calls. [REDACTED] feels more secure keeping in touch with Detective [REDACTED] she still fears [REDACTED] but she feels protected because she knows that she can call 911 in case [REDACTED] attempts to physically harm her in any way. Where as in Japan there are no firm laws in place to protect citizens from stalkers. Therefore, if [REDACTED] was deported to Japan, Japan does not have any laws that would protect [REDACTED] if [REDACTED] should decide to follow her to Japan.

While the ability of the citizen spouse to travel to Japan is not debated, the likelihood that he would do so, his ability to locate the petitioner in her home country and whether the spouse is familiar with the foreign culture, language, locality, or that her spouse or her spouse's family, friends, or others acting on his behalf in the foreign country would physically or psychologically harm the petitioner, has not been established. Further, while counsel claims that in Japan there are no firm laws in place to protect citizens from stalkers, she has not established that there is no protective service in Japan, that the petitioner would be unable to seek adequate protection from abuse, and that the country conditions in Japan will cause her extreme hardship. As previously noted, there is no evidence furnished, other than the one incident of March 10, 2000, to establish counsel's claim that the petitioner's spouse is pursuing or stalking the petitioner in the United States. Nor is there evidence that she even sought a protection order against her spouse in the United States.

Counsel asserts that the petitioner has lived in the United States for ten years, she has started a new life in the United States, and all of her hard work would be for nothing if she were deported. She further asserts that the petitioner has studied and started her

own business and if deported, she would be ripped away from her business and music connections she has made in the United States.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). Further, the loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

The evidence furnished by the petitioner is insufficient to establish that her removal from the United States would result in extreme hardship based on economic, political, or social problems in her country. Nor has she established that she would not find employment there or that she would be unable to pursue her occupation or comparable employment upon her return to Japan.

Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996). In the petitioner's case, removal from the United States would result not in the severance of family ties but rather in the reunification of her family in Japan.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

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.