



U.S. Department of Justice

Immigration and Naturalization Service

B91

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



PUBLIC COPY

FILE: [REDACTED]
EAC 99 255 53343

Office: Vermont Service Center

Date: FEB 2 2001

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:



Identification data deleted to
prevent clearly unwarranted
invasion of personal 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 of Trinidad and citizen of Canada 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 he: (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 whose deportation (removal) would result in extreme hardship to himself, or to his child; and (3) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the adjudication officer erred in his assertion that there was no evidence of extreme cruelty perpetrated by the petitioner's wife. Counsel argues that the requirement that the petitioner must furnish evidence to establish a clinical necessity for the petitioner to be the one caring for his brother is extreme and disregards the spirit and the letter of this unique legislation. Counsel further asserts that the adjudication officer's conclusion that the marriage was not entered into in good faith is ill founded both in fact and in law.

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 as a visitor on September 25, 1997. The petitioner married his United States citizen spouse on September 30, 1997 at Ft. Lauderdale, Florida. On August 24, 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, his U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that he 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, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his requests for additional evidence. The discussion will not be repeated here. Because the record did not contain satisfactory evidence to establish that the petitioner has been battered by or was the subject of extreme cruelty perpetrated by his wife, the director denied the petition.

On appeal, counsel countered each of the director's findings by claiming that the adjudication officer erred in his assertions and are contrary to the law. No evidence, however, was furnished to corroborate his claim. Nor did he submit evidence to establish that the director's decision was incorrect based on the evidence of record. The claim of qualifying abuse was evaluated by the director after a review of the evidence in this matter. He determined that the record did not contain satisfactory evidence to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse.

Based on the evidence in the record, it is concluded that the petitioner has failed to establish that he has been battered by or has been the subject of "extreme cruelty" as contemplated by Congress and as defined in 8 C.F.R. 204.2(c)(1)(vi). The petitioner has failed 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)(G) requires the petitioner to establish that his removal would result in extreme hardship to himself or to his 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.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here. Because the record did not contain satisfactory evidence to establish that the petitioner's removal to Canada would be an extreme hardship to himself, the director denied the petition.

On appeal, counsel argues that the requirement that evidence must be furnished to establish a clinical necessity for the petitioner to be the one caring for his (disabled) brother, is extreme and

disregards the "spirit and the letter of this unique legislation." Counsel, however, did not furnish additional evidence to support his arguments and to overcome this finding of the director. As provided in 8 C.F.R. 204.2(c)(1)(viii), 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 removal would cause extreme hardship. 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).

Furthermore, while counsel asserts that the adjudication officer erred in his conclusion regarding financial hardship of the petitioner in Canada, no evidence was furnished to corroborate his claim. Nor did he submit evidence, on appeal, to establish that the director's decision was incorrect based on the evidence of record. As cited by the director in his decision, 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 petitioner has not established that he would be unable to obtain employment in Canada. Nor is there evidence to indicate that the petitioner would be unable to pursue his occupation or comparable employment upon his return to Canada.

As provided in 8 C.F.R. 204.2(c)(1)(viii), the extreme hardship claim was evaluated by the director after a review of the evidence in this matter. The director determined that the petitioner furnished insufficient evidence to establish eligibility.

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

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that he entered into the marriage to the citizen in good faith.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his requests for additional evidence. The discussion will not be repeated here. He noted that the 1998 income tax and statements from two individuals furnished by the petitioner were insufficient to establish good-faith marriage. He further noted that although the petitioner's relationship with his United States

citizen spouse spanned upwards of three years, fifteen months of which were after the marriage, the petitioner has submitted insufficient evidence to establish that he entered into the marriage in good-faith.

On appeal, counsel asserts that the adjudication officer ignored the petitioner's evidence and statements regarding the couple's financial arrangements, that the petitioner assumed all costs, and that his wife did not commingle her assets. He states that there is, therefore, no evidence of commingling of assets as such commingling was clearly admitted not to have taken place. Counsel further asserts that the adjudication officer's conclusion that the marriage was not entered into in good faith is ill founded both in fact and in law. No evidence, however, was furnished to corroborate counsel's assertions. Nor did he submit evidence to establish that the director's decision was incorrect based on the evidence of record.

While it is reasonable to conclude that the evidence in the record establishes that the petitioner and her spouse had resided together, the petitioner, however, has failed to establish that he entered into the marriage to the U.S. citizen in good faith. The petitioner has failed to overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

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.