

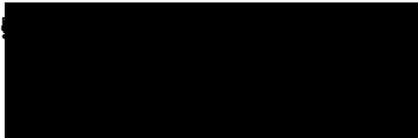


BA

U.S. Department of Justice
Immigration and Naturalization Service

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



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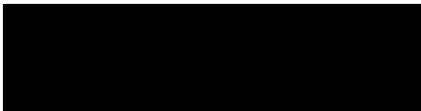
Office: Vermont Service Center

Date: AUG 22 2002

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:



Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a native and citizen of Ecuador 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 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 director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner has been subjected to "extreme mental cruelty" perpetrated by his U.S. citizen wife during their marriage. He submits additional evidence including evidence previously furnished and addressed by the director in his decision.

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 petition, Form I-360, shows that the petitioner arrived in the United States on December 31, 1989. However, his current immigration status or how he entered the United States was not shown. The petitioner married his United States citizen spouse on August 19, 1992 at Bronx, New York. On May 3, 2001, 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.

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(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. He determined that the statements from the petitioner's attorney and from Dr. [REDACTED] did not establish that the petitioner had been the victim of physical abuse or extreme mental cruelty; the evidence did not seem to indicate that the mental abuse was prior to his wife's abandonment of the marital home; and that his mental distress seems to be due to the fact that his spouse had left him and the children, and since his separation, the flaunting of his spouse's extramarital affairs to him.

On appeal, counsel submits evidence previously furnished and addressed by the director in his decision. He also submits additional affidavits and articles regarding domestic violence and the abuse of men by women.

In an affidavit dated February 24, 2002, the self-petitioner states that he and his wife began to have problems during an emergency trip he made to Ecuador to see his ill mother. He began to notice that his wife [REDACTED] had been lying to him. [REDACTED] stopped caring for the boys and their home and he often came home to see that the kids had gone long hours without food. The pressure became so overwhelming that he had to leave his job in order to ensure that he could be home to tend the kids when they were home from school. The unstable environment he was living in also caused him to have an ulcer. As their problems continued, [REDACTED] continue to go out

and began to come home drunk to begin arguments over any small thing. She would call him names, told him he was worthless, she did not want him there, and that all he was good for was to pay the bills.

In an affidavit dated January 17, 2002, [REDACTED] president of Meat and Fish Market, states that the petitioner worked at the market from August 1991 until March 1999, and that throughout the first six years of his employment, the petitioner's performance was impeccable; however, during the year 1998, he noticed drastic changes in the petitioner's work performance, and that the petitioner was crying in his office and confessing all sorts of problems that he was having with his wife. The problem consisted of lack of attention, no food, the kids were unattended, and the petitioner became overwhelmed because his functions were now to become the sole provider and the head of household, and the pressure was becoming unbearable at times. Mr. [REDACTED] further states that a few months later he had to again call the petitioner into his office as his performance was getting worse. The petitioner explained to him that the problems at home were bad, his wife was not coming home for days at a time, she was drunk, and that she told him about an affair she was having. He states that the petitioner developed ulcers and became depressed, and that this attitude led him to become a menace to the store as he was rude to customers. A few weeks after the latest incident, however, the petitioner advised him that he would not be returning to work as he could not bear the pressure any longer.

[REDACTED] stating that she and the petitioner were employees in the same establishment, indicates in an affidavit that the petitioner suffered tremendously due to his wife's infidelity, he became both mother and father to his children, his work suffered due to his personal problems, and that he finally had to resign from his job. Ms. [REDACTED] further states that the mental anguish that the petitioner suffered due to his wife's bizarre behavior made all his co-workers feel sorry for him.

[REDACTED] states in an affidavit that she knows the petitioner as they live in the same building, and that she took care of his son a couple of times mainly on Saturdays while he worked. She further states that the petitioner seems polite and caring, and she noticed a big difference in his manner. Now he seems depressed and troublesome, and when she ran into him in the elevator, he seemed tearful and he told her that his wife had left him and the three boys and he did not know where she was or what to do.

In another evaluation and assessment dated January 30, 2002, Dr. [REDACTED] indicates that the petitioner has had significant emotional problems since being married and living with his wife. He states that in 1998, the petitioner's wife had suspended all domestic care related to taking care of the children, as well as taking care of the house. While living in the marital

home, she would openly flaunt the fact that she slept with other men. Dr. [REDACTED] states that these extramarital affairs were purposely made known to the petitioner as a form of mental cruelty, that such mental cruelty may also be deemed a form of "Emotional Abuse," and that studies and articles have shown that emotional abuse may take the form of humiliation, extramarital affairs, provocative behavior with members of the opposite sex, and criticism. He further states that the petitioner's wife exhibited all of these behaviors while living together in the marital home. When his wife originally deserted him, the petitioner was forced to take care of her two children (from a previous marriage). At the current time, the petitioner has temporary custody of his son and the child's mother has visitation privileges on weekends.

A self-petitioner who has suffered no physical abuse is not precluded from a finding of eligibility for the benefit sought. As defined in 8 C.F.R. 204.2(c)(1)(vi), 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 also be considered acts of violence.

As provided in 8 C.F.R. 204.2(c)(2), the Service will consider any credible evidence relevant to the petition. Documentary proof of non-qualifying abuse may be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred. Based on the evidence in the record, it is concluded that the petitioner has been the subject of extreme cruelty as defined in 8 C.F.R. 204.2(c)(1)(vi). The petitioner has, therefore, overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

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 met that burden. As the director did not raise any other basis for denial, the appeal will be sustained.

ORDER: The appeal is sustained, and the petition is approved.