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U.S. Department of Justice  
Immigration and Naturalization Service

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



FILE: [Redacted]  
EAC 01 203 52684

Office: Vermont Service Center

Date: 14 JUN 2002

IN RE: Petitioner:  
Beneficiary:



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: Self-represented

Public Copy

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

*Robert P. Wiemann*  
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 dismissed.

The petitioner is a native and citizen of Korea 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) is the spouse of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A) based on that relationship; (3) 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; and (6) is a person of good moral character. The director, therefore, denied the petition.

On appeal, the petitioner asserts that the Service's decisions and findings are in error. She submits additional evidence.

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 a K-1 fiancée visa on March 28, 1999. She married her United States citizen spouse [REDACTED] within the required 90-day period, and was subsequently divorced from [REDACTED] on April 12, 2000. On September 11, 2000 at Reno, Nevada, the applicant married [REDACTED] a United States citizen. On June 7, 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, her U.S. citizen spouse [REDACTED] during their marriage.

PART I

8 C.F.R. 204.2(c)(1)(i)(A) provides that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States. 8 C.F.R. 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

8 C.F.R. 204.2(c)(1)(ii) provides that the self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. Further, 8 C.F.R. 204.2(c)(2)(ii) provides that a self-petition must be accompanied by evidence of the relationship. Primary evidence of the marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages of both the self-petitioner and the alleged abuser.

The petitioner indicated on Part 7 of the Form I-360 that her spouse [REDACTED] has been married two times. Because the record did not contain evidence that her spouse's prior marriage was legally terminated prior to their marriage, the petitioner was requested on August 17, 2001, to submit proof of termination of [REDACTED] prior marriage. The record, however, does not contain evidence that [REDACTED] prior marriage was legally terminated

prior to their marriage. A prior marriage not legally terminated is a bar to consideration of the marriage upon which the visa petition is based. See Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966).

On appeal, the petitioner asserts that she can not find proof of [REDACTED] prior marriage. She states that if the Service would send her proof of the marriage, she will try to find his divorce record according to the Service record. It is not the burden of the Service but, rather, the burden of proof is upon the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(A) and (B).

PART II

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.

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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, in his decision, 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 evidence furnished by the petitioner to establish that she was the victim of battery or extreme mental cruelty contained numerous inconsistencies, and that additional evidence submitted in response to his request also contained discrepancies. The director stated that, given that all these documents are based purely on the petitioner's statements to the individual writers of the documents and that they contain numerous inconsistencies, the reliability of the documents was considered insufficient at this time.

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i).

On appeal, the petitioner explains that her spouse, [REDACTED] has two sons [REDACTED] from [REDACTED] and that two more sons [REDACTED] are also [REDACTED] sons before she met [REDACTED]. She states that every Sunday they would bring all four boys to take care of them; she loved all four of them and they got along well with her; because she loved [REDACTED] and his sons, she did not want to make a police report or doctor's report; and that she did not want to give the boys the same pain that she had. The applicant, however, failed to submit additional evidence to establish that she

has been battered by, or has been the subject of "extreme cruelty" as contemplated by Congress, and to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

PART III

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.

The director determined that the applicant failed to establish that she is a person of good moral character based on the lack of properly completed police clearances and the domestic violence charge against her.

On appeal, the petitioner submits a letter of clearance from the [REDACTED] indicating that no record was found under the name of [REDACTED]. The petitioner also submits a letter from Sparks, Nevada Police Department indicating that a re-check was made on Han, Hye Seung and it was discovered that the petitioner was found guilty of domestic battery.

The record reflects that on March 13, 2000, in the Municipal Court of the City of Sparks, County of Washoe, Nevada, the applicant entered a plea of guilty to domestic battery. She was convicted of the crime and sentenced to serve 30 days in jail, suspended; 2 days of jail time imposed; 48 hours mandatory community service; and was imposed a fine of \$500 and \$155 in court costs.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen may file a self-petition, despite an arrest and/or conviction, if the criminal act constitutes a ground of inadmissibility or deportability that is waivable, and the act was connected to the alien's having been battered or subjected to extreme cruelty. Id. section 1503(b), 114 Stat. at 1520-21. Pub. L. 106-386 does not specify an effective date for the amendments made by section 1503. This lack of an effective date strongly suggests that the amendments entered into force on the date of enactment. Johnson v. United States, 529 U.S. 694, 702 (2000);

Gozlon-Peretz v. United States, 498 U.S. 395, 404 (1991).

Spousal/domestic abuse is a crime involving moral turpitude. Grageda v. INS, 12 F.3d 919 (9th Cir. 1993) Calif. Penal Code 273.5(a). [willful infliction of an injury upon a spouse, cohabitant, or parent of the perpetrator's child is a based and depraved act and is classified as a CIMT.] See also Corporal injury of a spouse/California Penal Code 273.5(a). [California courts found this violation to include "cruel or inhuman corporal punishment or injury." This crime is a CIMT.] In re Phong Nguyen Tran, Int. Dec. 3271 (BIA 1996). The infliction of bodily harm upon a person with whom one has such a familial relationship is an act of depravity which is contrary to accepted moral standards.

In this case, the applicant was convicted of domestic battery on March 13, 2000. The documents of record reflect that the applicant physically assaulted and broke the nose of her former spouse [REDACTED]. On the same day she was convicted of the crime, the court granted [REDACTED] protection order against the petitioner. On appeal, the petitioner states that [REDACTED] twisted her wrist, and as she was trying to take her wrist out of his hand, his nose got hit by her hand and his nose bled. She claims that [REDACTED] often has nose bleeds. The petitioner, however, failed to submit the police report regarding this arrest. Further, while she claims that she was kicked by [REDACTED] several times with his cowboy boots, no documentary evidence was furnished to establish her claim and to establish that the act was connected to the petitioner's having been battered or subjected to extreme cruelty.

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

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.