

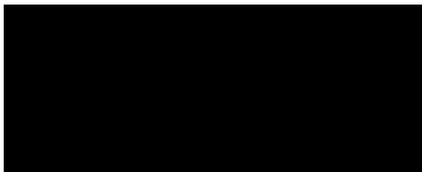


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U.S. Department of Justice
Immigration and Naturalization Service

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



FILE: [Redacted]
EAC 00 117 50587

Office: Vermont Service Center

Date: MAY 10 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

EXHIBIT 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 Jamaica 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; and (2) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner states that she wishes to emphasize strongly that she married in good faith in order to establish a solid, sound, and healthy family life. She asserts that her spouse has an uncontrolled, aggressive temperament, and that when the problems started to arise in the marriage, the petitioner convinced him to seek psychological evaluation and help. The petitioner 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 arrived in the United States as an F-1 student on March 3, 1997. The petitioner married her United States citizen spouse on July 24, 1997 at Ft. Lauderdale, Florida. On July 10, 2000, 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.

PART I

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 reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on January 2, 2001. That discussion will not be repeated here. He noted, however, that although the petitioner's spouse was seeking therapy at the request of the petitioner, there is no evidence that the petitioner was also seeing a counselor or therapist. He also noted that the court issued an injunction to protect the petitioner's spouse from domestic abuse, and that the restraining order lists the petitioner as the respondent and her spouse as the petitioner. Although the petitioner stated that her lawyer suggested that she "counter his action" by filing a restraining order against her spouse, it appeared that she did not take this step. The director determined that based on the conflicting evidence furnished, the petitioner's brief statement provided insufficient detail to support a finding that she was battered or subjected to extreme mental cruelty at the hands of her spouse.

The petitioner, on appeal, states that after three or four sessions of counseling, her spouse stopped attending counseling; however, from these sessions, the therapist was able to establish that her spouse was the primary cause of the problems in the family. There is no evidence, however, that the petitioner's spouse was the primary cause of "the problems in the family," nor is there evidence to establish that "the problems" relate to extreme cruelty

will consider any credible evidence relevant to the petition, and that the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. Further, 8 C.F.R. 204.2(c)(3) provides that if the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered. The record reflects that on June 6, 2000, the petitioner was accorded an opportunity, within 12 weeks, to refute this finding of the director or to submit additional evidence.

Counsel further asserts, on appeal, that the petitioner was devastated when he discovered his wife in bed with another man in June 1998, and that his wife's acts clearly constitute psychological or sexual abuse or exploitation. This incident, however, was refuted as untrue by the petitioner's spouse. She claimed that she left the marital home in June 1996, two years after the claimed incident, and that she and the petitioner had parted friends once the petitioner accepted the fact that she had a change of heart and found someone else. Further, while the petitioner alleges that his secretive witnessing of the incident is extreme cruelty, the petitioner, however, does not claim that his spouse intentionally had sex with another man in view of the petitioner in an effort to abuse or harm the petitioner. According to the petitioner's spouse, she had no knowledge of the petitioner secretly watching her in her apartment. The incident described by the petitioner is in no way similar to the types of behavior described in the regulations as "extreme cruelty. Furthermore, infidelity or unfaithfulness to a moral obligation, and abandonment are not included in, nor do they meet, the definition of qualifying abuse as provided in 8 C.F.R. 204.2(c)(1)(vi).

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). Further, 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." The evidence furnished is insufficient to establish that the claimed abuse perpetrated toward the petitioner by his spouse was "extreme." The petitioner has failed to establish that he was battered by or was the subject of "extreme cruelty" as contemplated by Congress, and to overcome the district director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

ORDER: The appeal is dismissed.