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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

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



FILE: [Redacted]
EAC 01 273 51175

Office: Vermont Service Center

Date: 30 OCT 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:



*Identifying data deleted to
prevent an unwarranted
invasion of personal privacy*

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 dismissed.

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 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, counsel states that the petitioner provided sufficient evidence that she was subjected to extreme cruelty by her U.S. citizen husband. He asserts that the Service erred in requiring the petitioner to provide evidence of physical abuse because the petitioner's abuse was emotional or mental in nature. Counsel further asserts that the Service also erred in holding that the petitioner did not establish that she "resided with her husband in good faith."

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 April 1, 1990. However, her current immigration status or how she entered the United States was not shown. The petitioner married her United States citizen spouse on February 18, 1997 at New York City, New York. On September 12, 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 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.

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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. That discussion will not be repeated here. He noted that the evidence furnished contained nothing which would indicate that the petitioner was battered by her spouse. Rather, it appears from the evidence in the record that the petitioner's spouse was an alcoholic and that he abandoned her.

On appeal, counsel asserts that the Service did not give sufficient weight to the detailed affidavit by the petitioner, and also erred in requiring the petitioner to provide evidence of physical abuse because the petitioner's abuse was emotional or mental in nature.

As noted above, the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." Further, a self-petitioner who has suffered no physical abuse is not precluded from a finding of eligibility for the benefit sought. Pursuant to 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. Furthermore, pursuant to 8 C.F.R. 204.2(c)(2), self-petitioners are encouraged to submit primary evidence whenever possible, the Service 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.

Despite counsel's claim on appeal, the record reflects that the claim of qualifying abuse was evaluated by the director after a review of the evidence contained in the record of proceeding. He noted that it appears from the evidence in the record that the petitioner's spouse was an alcoholic and he abandoned the petitioner. The director concluded that the record did not contain satisfactory evidence to demonstrate that the petitioner has been battered by or has been the subject of extreme cruelty perpetrated by her spouse.

The evidence provided in the present case does not suggest that the marital difficulties claimed by the petitioner were beyond those encountered in many marriages. Further, the relationship described by the affiants reflects what would be considered a troubled marital relationship but does not constitute qualifying abuse. The record indicates that the citizen spouse merely abandoned the marital relationship. "Abandonment" 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), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." The record contains insufficient evidence to establish 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)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

The director reviewed and discussed the evidence furnished by the petitioner and determined that the evidence was insufficient to establish the existence of a good-faith marriage. He noted that although the petitioner was requested on December 5, 2001 to submit additional evidence, in response, she failed to provide any evidence.

While counsel on appeal asserts that the Service erred in holding that the petitioner did not establish that she "resided with her

husband in good faith," the record reflects that the director reviewed the evidence of record and determined that it was insufficient to establish the existence of a good-faith marriage. The petitioner, on appeal, failed to submit any evidence to overcome the director's finding.

Furthermore, while the documents in the record establish that the petitioner and her spouse had resided together, the petitioner has failed to establish that she entered into the marriage to the U.S. citizen in good faith 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.