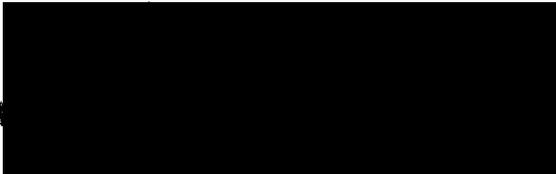


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536



PUBLIC COPY

FILE:

Office: Vermont Service Center

DEC 29 2003  
Date

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)

ON BEHALF OF PETITIONER: Self-represented

IDENTIFIED BY [unclear] 0120  
PROF [unclear]  
INVESTIGATION OF PROSECUTOR GENERAL

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 Citizenship and Immigration Services (CIS) 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.

Cindy M. Gomez for  
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 Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Haiti 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 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, the applicant states that the Service (now CIS) did not take into consideration the fact that her daughter has been denied the love and care of her father. She further states that she suffered extreme cruelty in front of her many friends due to the foul language used by her spouse. She submits two affidavits.

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 petitioner married her United States citizen spouse on December 15, 1995, at Brooklyn, New York. On April 10, 1998, her status was adjusted to that of a CR-6 (conditional resident alien) based on her marriage to her citizen spouse. The petitioner's conditional resident status was subsequently terminated on August 30, 2001. On March 28, 2002, 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.

\* \* \*

- (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.

Because the petitioner furnished no evidence to establish that she had met this requirement, she was requested on August 28, 2002, to submit additional evidence. The director listed examples of the evidence she may submit to establish extreme cruelty. The director noted that the petitioner responded by submitting a brief statement indicating that her spouse began staying away from home

in 1999 and eventually abandoned her in March 2001. The director maintained that abandonment does not constitute battery or extreme mental cruelty as envisioned by Congress when creating this provision of law.

The applicant, on appeal, submits affidavits from two acquaintances:

- [REDACTED] states that he witnessed the return of the petitioner's spouse after a few days of absence, and that he did not apologize for being away; instead his first word was "bitch." At that point, [REDACTED] stepped out.
- [REDACTED] states that she is aware of the fact that the petitioner and her spouse are constantly fighting due to the fact that he often spends the night "outside." She states that in March 2001, she visited the couple after the petitioner's spouse was away for three days, and that he told the petitioner that "he could stay out as long as he wants or he would not show up to the interview."

Not apologizing for being away from home, and the one incident of the usage of one expletive overheard by [REDACTED] are insufficient to establish extreme cruelty. Additionally, while [REDACTED] stated that the petitioner and her spouse are constantly fighting, she failed to indicate how she is aware of the constant fights or arguments. The one incident described in her affidavit is not sufficient to establish extreme cruelty. Nor does the record contain evidence that the marital difficulties were compounded by any effort on the part of the citizen spouse to control the petitioner with threats regarding her immigration status.

The evidence provided in the present case does not suggest that the marital difficulties claimed by the petitioner and by the two affiants were beyond those encountered in many marriages. Further, the incidents described by the affiants reflect 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. As determined by the director, "abandonment" is not included in, nor does it meet, the definition of qualifying abuse. Furthermore, the affidavits, without corroborating evidence of the abuse, do not establish that the petitioner was the subject of extreme cruelty.

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." None of the affiants found that the claimed abuse perpetrated toward the petitioner by her spouse was "extreme." Furthermore, although the director listed examples of evidence the petitioner may submit to establish extreme cruelty, these were not submitted, nor did she submit an explanation as to why such documentation is unavailable.

Based on the evidence in the record, it is concluded that the petitioner has failed to establish that she 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 findings 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 not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.