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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



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

FILE: 
EAC 01 235 54507

Office: Vermont Service Center

Date: **FEB 28 2003**

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:



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 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 he: (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 reiterates statements made by the petitioner in his self-affidavit. He added that in [redacted] case, the type of abuse is neither battery nor physical, and that one must determine the individual's background and culture to determine whether the relationship was an abusive one to that individual. He further added that [redacted] came from a background where match making is common and divorces are seen as being mortally unethical. Counsel asserts that during their period of marriage, [redacted] lived with [redacted] verbal and emotional abuse; nevertheless, since marriage is one of the biggest part of [redacted] life, he did everything he could to save it, and did everything [redacted] wanted. However, [redacted] took advantage of the fact that [redacted] has a soft heart and calm personality, and that regardless of his feelings, [redacted] openly, knowing it would hurt [redacted] talked to her other boyfriends in his presence. Counsel further asserts that [redacted] married [redacted] in good faith, and that it is common in the Korean culture for a man and a woman to find their mate through matchmaking. [redacted] and [redacted] marriage is a legitimate marriage, and that they both loved each other. He added that even when the petitioner made the decision to divorce [redacted] she threatened the petitioner thinking that would prevent him from leaving her.

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 as a visitor on September 21, 1998. The petitioner married his United States citizen spouse on January 2, 1999 at Las Vegas, Nevada. The petitioner subsequently petitioned for dissolution of the marriage, and the judgment of divorce became effective on August 25, 1999. On August 13, 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.

PART I

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.

Because the petitioner furnished insufficient evidence to establish that he has met this requirement, he was requested on October 11, 2001, to submit additional evidence. The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here. Because the record did not contain satisfactory evidence to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen or lawful permanent resident during the marriage, or that he 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 denied the petition.

On appeal, counsel reiterates statements made by the petitioner in his self-affidavit. He added that in the petitioner's case, the type of abuse is neither battery nor physical, but rather, during their years of marriage, [REDACTED] lived with [REDACTED] verbal and emotional abuse. Despite counsel's claim that the parties were married for several years, the record in this case reflects that the petitioner and [REDACTED] resided together for one month, and that they were subsequently divorced within seven months of the marriage.

The director reviewed the evidence furnished by the petitioner to establish extreme cruelty, and determined that the affidavits submitted were not sufficient to determine that the petitioner had been subjected to battery or extreme mental cruelty committed by the petitioner's spouse.

On appeal, no additional evidence was furnished to overcome the director's findings, pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

PART II

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that he entered into the marriage to the citizen in good faith.

The director noted that the petitioner furnished no evidence to establish that he has met this requirement. He was, therefore,

requested on October 11, 2000 to submit additional evidence. The director listed examples of the evidence he may submit to show the existence of a good-faith marriage. Because the petitioner, in response, furnished no evidence to establish that he married his citizen spouse in good faith, the director denied the petition.

Counsel, on appeal, asserts that the petitioner married [REDACTED] in good faith, that it is common in the Korean culture for a man and a woman to find their mate through match making, that the marriage is a legitimate marriage, and that the petitioner and [REDACTED] loved each other.

No evidence, however, was furnished to corroborate counsel's claims on appeal, and to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

PART III

8 C.F.R. 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

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 is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. *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).



The petitioner furnished, on appeal, a copy of a Judgement of Dissolution of Marriage effective on August 25, 1999. The petitioner filed his self-petition on August 13, 2001, almost two years after his divorce was final. Although the divorce of the two parties prior to the filing of the petition is no longer a bar, the petitioner has not established a connection between the legal termination of his marriage within the past two years and battering or extreme cruelty by his spouse.

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.

