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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 01 148 52046

Office: Vermont Service Center

Date:

JAN 06 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:



Identifying data deleted to prevent clearly 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. A subsequent appeal was summarily dismissed by the Associate Commissioner for Examinations. A brief was submitted by the petitioner subsequent to the appeal but was not included in the record of proceeding prior to the decision of the Associate Commissioner. The case will, therefore, be reopened. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a native and citizen of Brazil 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 denied the petition after determining 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.

Upon review of the record of proceeding, the Associate Commissioner noted that the petitioner had failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal. He further noted that although the petitioner indicated that she was sending a brief and/or evidence within 30 days, it had been approximately 12 months since the filing of the appeal, and no additional statement or evidence was provided. The Associate Commissioner, therefore, summarily dismissed the appeal on September 18, 2002.

A brief, submitted by the petitioner subsequent to the appeal, was received by the Service but was not included in the record of proceeding prior to the decision of the Associate Commissioner. Therefore, the case will be reopened on a Service motion in order that the brief may be addressed.

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 as a visitor on January 4, 1991. The petitioner married her United States citizen spouse on June 8, 1998 at Brooklyn, New York. On April 2, 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.

Because the petitioner furnished no evidence to establish that she has met this requirement, she was requested on May 2, 2001 to submit additional evidence. The director listed examples of evidence she may submit to establish extreme cruelty. The petitioner responded by listing names and addresses of individuals

and making notations on the director's letter of request for evidence. The director determined that short, brief notations regarding her relationship with her spouse do not provide a clear outline of the abuse and events that took place. The director added that the Service cannot make a determination based on these short answers, as an understanding of the claimed abusive relationship had not been conveyed. Based on the evidence presented and the response to the Service's requests for evidence, the director concluded that the petitioner had not established that she was eligible for the benefit sought.

Subsequent to the appeal, the petitioner submits a brief and documents, some of which had been previously furnished and contained in the record of proceeding. None of the documents relate to the petitioner's claim that she has been battered by, or has been the subject of extreme cruelty. In her brief, the petitioner states that she considers her case to be based on her status as an abandoned spouse, and that she endured extreme hardship during her marital life. She states that many problems arose shortly after her marriage to [REDACTED]

He started by not taking care on a timely basis of his responsibilities as head of the family. He started to leave the house in the evening hours longer than expected. Although no physical abuse was involved, in many occasions he abused verbally. His pattern of behaviour changed drastically and suddenly, I felt my life was broken apart. His verbal abuses ran from simply screams to nasty and despicable words. He did not allow me to take part in his social life, neither allow me to visit personal friends without him. He used to allege that our cultures were different and I do not have enough mind to assimilate his pattern. In definitive words, our life as husband and wife changed, and I have to endure hard times to keep my love for him alive.

The petitioner further states that a year after the marriage, in June of 1999, [REDACTED] traveled to his native country. He left a note advising her that she can keep working to support herself because he did not have enough money after setting up his business in Egypt, and that he would return home before February 2000. The petitioner states that at the "beginning of his departure, we get in contact over the phone in a couple of occasions, but we lost contact with each other and, as of today, I am not aware of his whereabouts."

Marital tensions and incompatibilities which serve to place severe strains on a marriage, and in fact may be the root of a marriage's disintegration, do not, by themselves, constitute the extreme

cruelty which was contemplated by Congress in enacting the Violence Against Women Act. The relationship described by the petitioner reflects what would be considered a troubled marital relationship but does not constitute qualifying abuse. Nor does the petitioner's statement suggest that the marital difficulties claimed by the petitioner were beyond those encountered in many marriages. Further, while the petitioner claims that the citizen spouse 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).

As provided in 8 C.F.R. 204.2(c)(2), the Service will consider any credible evidence relevant to the petition. A self-petitioner who has suffered no physical abuse is not precluded from a finding of eligibility for the benefit sought. The petitioner, in this case, has furnished no evidence to support her claim that qualifying abuse has occurred.

Based on the evidence in the record, it is concluded that the petitioner has failed to establish that she was battered by or was 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 finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

Accordingly, the decision of the Associate Commissioner dated September 18, 2002, will be affirmed.

ORDER: The decision of the Associate Commissioner dated September 18, 2002, is affirmed.