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

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prevent disclosure of information
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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

JUN 09 2003

FILE: [REDACTED] Office: Vermont Service Center Date:
EAC 02 075 51758

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

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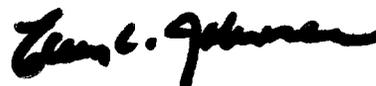
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.



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 the Dominican Republic 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 resided in the United States with the citizen or lawful permanent resident spouse; (2) 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 (3) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner asserts that he did provide corroborated data of cohabitation with his spouse, that she abused him in different manners, and that his sworn statement should be received as truthful and accurate to the best of his recollection. The applicant states that he wishes this case to be re-examined under the new statute for abused/battered spouses.

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 July 3, 1993. The petitioner married his United States citizen spouse on July 30, 1993 at Brooklyn, New York. On December 26, 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.

8 C.F.R. § 204.2(c)(1)(i)(D) requires the petitioner to establish that he has resided in the United States with his U.S. citizen spouse. Additionally, 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.

Because the petitioner furnished insufficient evidence to establish that he met these requirements, he was requested on April 22, 2002, to submit additional evidence. The director listed examples of the evidence he may submit to show joint residence and good-faith marriage. The director reviewed the petitioner's affidavit and the affidavits from six individuals furnished by the petitioner in response to the director's request for additional evidence. He noted that although the six affiants indicated that they visited the petitioner at the [REDACTED] address after his marriage to [REDACTED] (his U.S. citizen spouse), they did not indicate that they ever visited the petitioner at the [REDACTED] address where the petitioner indicated he resided with [REDACTED]. He further noted that the petitioner had not submitted sufficient evidence to establish that he and [REDACTED] planned on establishing a life together.

On appeal, the petitioner asserts that he did provide corroborated data of cohabitation with his spouse, and that he "admit not listing my joint address at [REDACTED] where [REDACTED] had been sharing a marital relationship with me scarcely and very so infrequently." The petitioner states that [REDACTED] comes and goes without any justification, he knows that she suffers mental instability due to her drug addiction and dependency to chemicals, but he loves her and will always provide for her because of all her weaknesses, and that he remains married to her and he does care for her.

While the petitioner requests that his case be re-examined, the record reflects that the evidence furnished by the petitioner was evaluated and discussed by the director in his decision. He determined that the record did not contain satisfactory evidence to demonstrate that the applicant had resided in the United States with his spouse, or that he entered the marriage in good faith. Further, although the director listed examples of evidence the petitioner may submit to show the existence of a good-faith marriage, the petitioner did not submit an explanation as to why such documentation is unavailable. The petitioner did not submit additional evidence on appeal.

Even if the petitioner did reside with his spouse as claimed, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D), no evidence was furnished to establish that the petitioner entered into the marriage to the U.S. citizen in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H).

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 reach 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 insufficient evidence to establish that he had been the subject of extreme cruelty, he was requested on April 22, 2002, to submit additional evidence. The request listed evidence the petitioner may submit to establish extreme cruelty. The director, in his decision, 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 record did not contain satisfactory evidence to demonstrate that the petitioner qualified under this requirement.

On appeal, the petitioner asserts that the director failed to assess substantial abuse as required under the statute. He states that his spouse abused him in different manners, including having him as her sexual partner when he was not willing to do so. He requests that his case be re-examined.

The record reflects that the evidence furnished by the petitioner was evaluated and discussed by the director in his decision. He noted that no evidence was provided by the petitioner to corroborate his statements that he was abused by his spouse. The director determined that the record did not contain satisfactory evidence to demonstrate that the petitioner has been the subject of extreme cruelty. No additional evidence was furnished, on appeal, 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.