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

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



FILE: 
EAC 02 114 53499

Office: Vermont Service Center

Date: **JUN 16 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)

ON BEHALF OF PETITIONER: Self-represented

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 (AAO) 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 record did not contain satisfactory evidence to establish that the petitioner: (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, the petitioner asserts that she is emotionally disturbed and confused after the marital problems with her husband and, therefore, she failed to ask for review of the evaluation made by the therapist [REDACTED]. She states that her courtship with her husband was about nine months in 1996, she did not marry him until January 7, 1997, and the erroneous date (1996) indicated by the therapist should not be used to materially deny her I-360 self-petition. The petitioner submits documentation previously furnished and addressed by the director.

8 C.F.R. § 204.2(c)(1) states, in pertinent parts, 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 March 18, 1996. However, her current immigration status or how she entered the United States was not shown. The petitioner married her United States citizen spouse on January 7, 1997 at Manhattan, New York. On February 14, 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.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on July 25, 2002, to establish extreme cruelty. He noted that in the assessment of [REDACTED] C.S.W., Psychotherapist, she did not describe any specific incidents of verbal abuse the Service could use to draw the conclusion that the verbal abuse would meet the level of extreme cruelty. The director also noted that contrary to the petitioner's claim that she resided with her spouse from 1997 until 1999, and that she married on January 7, 1997, [REDACTED] indicated that the petitioner and her spouse courted for nine months and married in February 1996.

The petitioner, on appeal, asserts that the erroneous date indicated by the therapist should not be used to materially deny her I-360 self-petition, and that this action was unfair, improper and a due process violation under the Battered Immigrant Women Protection Act.

It is noted that the director did not deny the petition based solely on this reason. The actions taken in this matter were based on documented evidence, and conclusions were made based on that evidence. The AAO finds no evidence of affirmative misconduct to support the applicant's argument. Furthermore, the applicant, on appeal, failed to address the director's finding that the assessment by [REDACTED] did not describe any specific incidents of verbal abuse that could be used by the Service to draw the conclusion that the verbal abuse would meet the level of extreme cruelty.

The petitioner, on appeal, submits the same documentation previously furnished and addressed by the director. No new evidence was furnished by the petitioner to establish that she has been battered, by or has been 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.

Because the petitioner furnished no evidence to establish that she entered into the marriage to the U.S. citizen in good faith, she was requested, in a notice of intent to deny dated July 25, 2002, to submit additional evidence. No evidence was provided by the petitioner to support her claim that she entered into the marriage in good faith.

On appeal, the petitioner neither addressed nor presented evidence to establish the existence of a good-faith marriage, and to overcome the director's findings 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.