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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 02 121 51889

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 petitioner failed to establish that she: (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 states that the evidence provided from the initial application for adjustment of status, and thereafter as a battered spouse, will meet the burden asked of the self-petitioner. She submits additional evidence and requests a *de novo* review of the entire record available as evidence of substantial abuse.

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 claimed to have entered the United States without inspection on August 7, 1991. She was subsequently paroled into the United States on March 5, 2001, pursuant to section 212(d)(5) of the Act. The petitioner married her United States citizen spouse on July 16, 1993 at Bronx, New York. On February 25, 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.

PART I

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

The director, in his decision dated November 8, 2002, noted that this was the third self-petition the petitioner had filed. He determined that the petitioner failed to submit any new evidence, as had been requested on September 19, 2002, to establish that she had resided with her U.S. citizen spouse, and that she entered into the marriage to the citizen in good faith.

On appeal, the petitioner submits a copy of a previously submitted self-affidavit. She also submits photographs similar to those previously furnished and addressed by the AAO in its decision of December 1, 1997; and affidavits from [REDACTED] and friends and relatives previously furnished and contained in the record of proceeding. This evidence was evaluated and discussed by the AAO on December 1, 1997, and by the director in his decision of February 11, 2002, notice of intent to deny dated September 19, 2002, and decision of November 8, 2002.

The petitioner, on appeal, submits three new pieces of evidence: (1) an affidavit from [REDACTED] stating that in February 1995, the petitioner's spouse introduced him to the petitioner, that the petitioner worked with him from February 1995 until November 1997, and that she is an honest person with high moral values; (2) an affidavit from [REDACTED] indicating that she has known the petitioner and her husband since 1993, and that in 1995, the petitioner's spouse went to Italy and since that date the petitioner is still waiting for him; and (3) an affidavit from

Altagracia Batista indicating that she has known the petitioner and her spouse for the past five years, she had the opportunity to share time with them in numerous occasions, they are very happy and very much in love, and they are very honest and hard-working individuals.

It is noted that neither [REDACTED] nor [REDACTED] attested that they have personal knowledge that the petitioner and her spouse resided together, or that the marriage was bona fide. Further, Ms. [REDACTED] affidavit contradicts the record. While she attests that she has known the petitioner and her spouse for the past five years, her statement was dated November 22, 2002; therefore, she would have known them since November 1997. It is noted that the petitioner, in her I-360 self-petition, claimed to have resided with her spouse from February 1993 until October 1995 and that he left for Italy in 1995 and hasn't returned.

Therefore, this new evidence, furnished on appeal, is insufficient to establish that the petitioner and her spouse resided together, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D), and that she entered into the marriage to the U.S. citizen in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H).

PART II

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, in his September 19, 2002 notice of intent to deny the petitioner's third self-petition (filed on February 25, 2002), determined that the petitioner provided insufficient evidence to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen spouse during the marriage. After reviewing the record of proceeding, the director noted that:

(1) The petitioner's first self-petition (filed on January 19, 1996) was denied by the director on December 6, 1996, because the record did not contain sufficient evidence to establish that she had been the subject of extreme cruelty. The AAO dismissed the appeal on December 1, 1997, after determining that the evidence provided was insufficient to establish qualifying abuse. The AAO also noted that documentation presented was insufficient to establish either the bona fides of the qualifying marriage, or that the petitioner, in fact, had resided with her claimed abusive spouse.

(2) The petitioner's second self-petition (filed on July 27, 2001) was denied by the director on February 11, 2002, because the evidence furnished by the petitioner was insufficient to establish that she was eligible for immigrant classification based on her relationship, that she resided with her spouse, and that she had been the subject of battery or extreme cruelty perpetrated by her

spouse. (It is noted that no appeal was filed by the petitioner based on this denial.)

The petitioner was, therefore, granted 60 days in which to submit additional evidence to establish that she had been battered by or had been the subject of extreme cruelty. The director listed examples of evidence she may submit to establish extreme cruelty.

In his decision of November 8, 2002, the director discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. He noted that the assessment from [REDACTED] a psychotherapist, and the letter from [REDACTED] of the Center for Victim Support, stated that the petitioner's spouse had pointed a gun to her head and threatened to kill her. The director noted that this was the third petition the petitioner filed with the Service, and that it is the first time it has been mentioned that the petitioner was assaulted and threatened with a gun. The director, therefore, concluded that these documents lack sufficient credibility to overcome the grounds for denial.

On appeal, the petitioner submits documentation previously furnished and addressed by the director in his three decisions. No new documentation was offered to establish that the petitioner had been the subject of extreme cruelty perpetrated by the citizen spouse. Nor did the petitioner address the director's conclusion that the documents furnished lack credibility. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. § 204.2(c)(2)(i).

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.