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

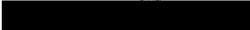
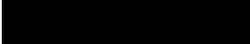
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ADMINISTRATIVE APPEALS OFFICE
Eye Street N.W.
EIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



JUN 18 2003

FILE:  Office: Vermont Service Center Date:
EAC 02 031 50783

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:



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 Israel 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 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 director, therefore, denied the petition.

On appeal, counsel asserts that the director erred when he decided that the emotional distress the petitioner suffered did not rise to the level of extreme mental cruelty. He subsequently submits a brief.

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 March 20, 1995. The petitioner married his United States citizen spouse on March 19, 1999 at Skokie, Illinois. On October 30, 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)(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.

The director 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, however, that unfaithfulness by a spouse, abandonment and finally divorce, does not meet the definition of battery or extreme mental cruelty that is required to establish the petitioner's eligibility for benefits rendered under the Violence Against Women Act (VAWA).

On appeal, counsel cites caselaw regarding the definition of extreme cruelty as determined by Federal and State courts, and asserts that the lack of a consistent definition of "extreme mental cruelty" is a gaping void in the Service's regulations. He states that it is clear that physical abuse constitutes sufficient cruelty to be approved under VAWA, and it is similarly clear that VAWA's provision also includes verbal abuse. He further states that VAWA was a tremendous step forward in that it recognized an alien can suffer extreme mental cruelty where the "green card" is used as a weapon in a marriage. Counsel asserts that VAWA must also include less traditional forms of abuse under the category of emotional abuse and, while courts worldwide have ruled on this issue, it is time for the Service to recognize adultery and its consequences as a form of emotional abuse. He further asserts that it is time for the Service to recognize that the threat of deportation or other interference with the immigration process is *per se* abuse.

A self-petitioner who has suffered no physical abuse is not precluded from a finding of eligibility for the benefit sought. As defined in 8 C.F.R. 204.2(c)(1)(vi), the 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. Other abusive actions may also be acts of violence under certain circumstances if they are part of an overall pattern of violence.

The director maintained that the Service has determined that the parameters of extreme mental cruelty must indicate intent to control through psychological attacks and/or economic coercion, and also includes emotional abuse, humiliation, degradation, and isolation, and, that a pattern of purposeful behavior directed at achieving compliance from or control over the victim must be demonstrated. The director concluded that the evidence furnished by the petitioner indicates that the petitioner was in emotional distress due to the actions of his spouse, but that this distress, while intense, is not out of the ordinary and does not, by itself, qualify as abuse.

While documents provided by the petitioner indicate that the petitioner's emotional distress was caused by his wife's unfaithfulness, abandonment, and finally divorce, there is no evidence that the petitioner's wife used the "green card" as a weapon in the marriage, nor is there evidence that she had threatened the petitioner with deportation. The petitioner's wife merely abandoned the marriage after she returned to Israel. Abandonment by a spouse does not constitute battery or extreme cruelty contemplated by Congress when enacting the Violence Against Women's Act. Such distress, while intense, is not out of the ordinary and does not, by itself, qualify as abuse.

Based on the evidence in the record, it is concluded that the petitioner has failed to establish that he 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).

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.