PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Citizenship and Immigration Services

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

B9

[redacted]

FILE: [redacted] EAC 99 040 51624 Office: Vermont Service Center Date: NOV 13 2003

IN RE: Petitioner:
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:

[redacted]

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 Trinidad 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, counsel asserts that the director erred in not finding that the petitioner has been the subject of extreme cruelty and battery at the hands of his U.S. citizen wife. Counsel submits additional evidence.

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 with a K-1 fiance visa on August 10, 1996. The petitioner married his United States citizen spouse within the required ninety-day period, on August 15, 1996 at Hampton, Virginia. On January 14, 1999, 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.

PART I

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.

Because the petitioner furnished no evidence to establish that he had resided with his citizen spouse, he was requested on February 27, 2002 to submit additional evidence. The director listed examples of the evidence he may submit to show joint residence. The director reviewed the evidence furnished in response to his request and determined that the petitioner had

not provided any evidence to corroborate his statement that he had resided with his citizen spouse.

On appeal, counsel submits copies of (1) a lease agreement signed by the applicant and his spouse for 135 Lassiter Drive, Apartment 39, reflecting that the petitioner was added to the lease effective August 28, 1996, (2) an acknowledgement of intent to vacate Apartment 39 as of January 12, 1997, signed by the petitioner and his spouse, (3) a statement from the resident manager of the apartment confirming that the petitioner and his spouse resided in Apartment 39, and that the petitioner was a model resident, and (4) several photographs of the petitioner and his spouse.

Based on the evidence furnished on appeal, it is concluded that the petitioner has established that he and his spouse had resided together. The petitioner has overcome this finding of the director pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D).

PART II

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.

* * *

(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 he had met this requirement, he was requested on February 27, 2001 to submit additional evidence. The director listed examples of evidence the petitioner may submit to establish extreme cruelty. In response, the petitioner furnished a self-affidavit. The director noted that although the petitioner claimed in the self-affidavit that his spouse scratched him on the face, got a knife

and threatened to kill him, told him she was canceling his immigration, and called the police and made false accusations against him, the petitioner had not furnished evidence to support his statements, nor did he provide the police reports relating to the incident.

On appeal, counsel submits:

1. A letter from Dr. David Deuser, MD, Clinical Associates Professor, indicating that the petitioner was seen by him on January 6, 2003 in reference to a dysfunctional marriage, and that the petitioner reported that he was currently addressing immigration issues because of the failed marriage and was seeking evidence that he had done what he could to make the marriage last, but that his wife would not work toward the same goal. Dr. Deuser states that the petitioner described to him a relationship that was both physically and verbally abusive, and that the "depression, despair and devastation of abuse from a woman with whom he had hoped to spend a lifetime made it impossible to continue the relationship in addition to impairing his functioning during this period."

2. A letter from the Metropolitan Counseling Service (the name of the counselor is illegible) dated January 2, 2003, indicating that the petitioner presented himself at the Metropolitan Counseling Service to discuss his marital difficulties. The counselor indicated that the petitioner was married on August 15, 1996 and separated from his wife in January 1997. The counselor further indicated that the petitioner reported that throughout the marriage, his wife was violent, physically abusive, and on several occasions "threw him out of the apartment," and that there were constant arguments that have traumatized him and left him with stress, anxiety, and depression.

3. A letter dated January 7, 2003, from [redacted] indicating that she had been a classmate of [redacted] (the petitioner's spouse), and that [redacted] had pulled a knife on her husband (the petitioner) when she attempted to make a false accusation against the petitioner.

While it is stated that the petitioner has been physically and mentally abused by his spouse during the marriage, it is noted that the petitioner did not seek counseling until January 2003,

more than six years after the claimed separation from his wife, and more than four years after the filing of the self-petition.

Further, the evaluations from Dr. Deuser and from the Metropolitan Counseling Service failed to describe incidents of the abuse and the extent of the abuse inflicted on the petitioner, and failed to indicate that any objective evidence or criteria was utilized in determining the source or severity of the petitioner's emotional condition. Rather, the alleged abuse described by the evaluators appears to be based purely on the testimony of the petitioner, and failed to establish that their conclusions are based on anything other than statements made by the petitioner. It is noted that Dr. Deuser and the evaluator from the Metropolitan Counseling Service failed to list their credentials.

The letter from [redacted] is mostly a character reference of the petitioner. While Ms. [redacted] indicated that the petitioner's wife [redacted] pulled a knife on the petitioner when [redacted] attempted to make a false accusation against the petitioner, she failed to establish that she was an eye-witness to this incident, or that she knew sufficient details regarding any other incidents of abuse or extreme cruelty. The alleged abuse described by Ms. [redacted] appears to have been based solely upon the petitioner's version of events. She has not established that her conclusions are based on anything other than statements made by the petitioner.

Furthermore, the director noted that although the petitioner indicated that his spouse scratched his face, got a knife and threatened to kill him, and called the police and made false accusations against him, the petitioner had not provided the police report relating to that incident. On appeal, the petitioner again did not provide the police report to support his claim.

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 this finding of the director, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E).

PART III

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 no evidence to establish that he has met this requirement, he was requested on February 27, 2002 to submit additional evidence. The director listed examples of the evidence the petitioner may submit to show the existence of a good-faith marriage. He reviewed and discussed the evidence furnished by the petitioner in response to his request. That discussion will not be repeated here. The director noted, however, that other than the petitioner's own statement, the record did not contain evidence to establish his intent in marrying his citizen spouse.

On appeal, counsel submits letters from (last name illegible), from (the petitioner's employer), from Pastor and from (see item 3 above).

The letters furnished are character references, and do not address the good-faith nature of the relationship between the petitioner and his spouse, or that the marriage was entered in good faith.

The petitioner has failed to establish that he entered into the marriage to the U.S. citizen in good faith, and to overcome this finding of the director, 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.