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U.S. Department of Homeland Security
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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



FILE:



Office: VERMONT SERVICE CENTER

Date: **APR 07 2004**

IN RE:

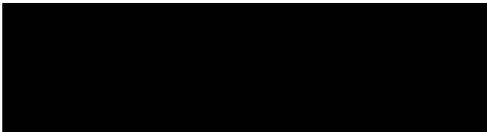
Petitioner:



Beneficiary:

PETITION: 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 of the Administrative Appeals Office 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.

Cindy N. Gomez for

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 Peru 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, the petitioner asserts that the Service [now Citizenship and Immigration Services (CIS)] erred in denying his petition because he had been mentally abused by his spouse. He claims that the act of extreme mental cruelty could only be proven by his statement and by his personal friends and family who were aware of the relationship. He submits another self-statement and copies of statements previously furnished.

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 Form I-360, Petition for Amerasian, Widow or Special Immigrant, indicates that the petitioner arrived in the United States in 1993. However, his current immigration status or how he entered the United States was not shown. The petitioner married his United States citizen spouse on May 31, 1997, at Yonkers, New York. On April 29, 2003, 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.

* * *

(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 met this requirement, he was requested on November 15, 2002, and again in a notice of intent to deny dated January 27, 2003, to submit additional evidence. The director listed examples of evidence he may submit to establish extreme cruelty. The director noted that the petitioner responded by submitting another personal statement in which he indicated that his spouse asked him for \$14,000 for her daughter's school, and at this point, she became extremely cruel. The petitioner, however, did not indicate how this subjected him to extreme cruelty.

The petitioner, on appeal, submits copies of statements from two acquaintances that were previously furnished, both stating that to the best of their knowledge and belief, the marriage of the petitioner and his spouse was entered into in accordance with the law of the place where the marriage took place. None of the affiants, however, address the petitioner's claim that he has been the subject of extreme cruelty. Nor did they indicate that

they were eye-witnesses to the abuse, and that they knew sufficient details regarding any incidents of abuse or extreme cruelty.

The petitioner also submits another self-statement in which he states that in 1999, his spouse was getting home late, and when he asked where she had been, she began to argue and fight, was very violent, and told him that he had no right to question her. He further states that as time went on, they became very distant, she was never home, and when she was home, all she did was "fight." He reiterates that his spouse left home, that he did not see her for five months, and that when she did come back, she came to tell the petitioner that he had to give her \$14,000 to pay for her daughter's school. He states that when he refused to give her the money, she became hysterical and again became very violent. She threatened him by saying that she was going to call the police and have him arrested. He further states that she constantly came to his house, and she kept calling to ask him for this money, until she finally left him alone in August 1999.

The petitioner's statement, in this case, is not supported by any documentary evidence to establish his claim of abuse. Further, the relationship described by the petitioner reflects what would be considered a troubled marital relationship, but does not constitute qualifying abuse. The record indicates that the citizen spouse merely abandoned the marital relationship. "Abandonment" is not included in, nor does it meet, the definition of qualifying abuse.

As provided in 8 C.F.R. § 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." Neither the petitioner nor the affiants indicate that the claimed abuse perpetrated toward the petitioner by his spouse was what could be considered as "extreme." Furthermore, although the director listed examples of evidence the petitioner may submit to establish extreme cruelty, no evidence was provided, nor did he submit an explanation as to why such documentation is unavailable.

Based on the evidence in the record, it is concluded that the petitioner has failed to establish that he has been battered by, or has been 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 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.