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Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: [Redacted]
EAC 02 215 53529

Office: VERMONT SERVICE CENTER

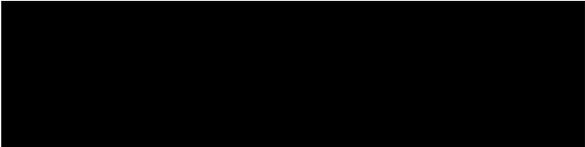
Date:

APR 12 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

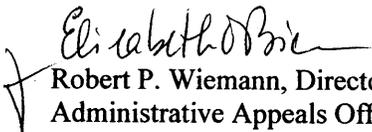
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 Egypt 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 is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii). The director determined that the petitioner failed to establish that he had been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse. The director, therefore, denied the petition.

On appeal, counsel asserts that that the director's decision was erroneous and submits additional documentation.

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;

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the evidence on the record, the petitioner last entered the United States as an F-1 academic student on July 14, 1997. The petitioner married his United States citizen spouse on April 20, 1999 in Jersey City, New Jersey. On June 10, 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, his U.S. citizen spouse during their marriage.

The regulation at 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." The regulation at 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.

The regulation at 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.

Because the petitioner furnished insufficient evidence to establish that he has met this requirement, among others, he was requested on November 20, 2002, to submit additional evidence. The director listed evidence the petitioner might submit to establish extreme cruelty.

Counsel for the petitioner requested additional time to respond to the request in a letter dated January 21, 2003. On March 19, 2003, the petitioner submitted his own affidavit as evidence of the abuse he endured and a psychiatric evaluation performed on the basis of a one-hour session with the petitioner. The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including a psychiatric evaluation by Dr. [REDACTED] to establish that the petitioner qualifies for the benefit sought. The discussion will not be repeated here. Because the record did not contain satisfactory evidence to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen or lawful permanent resident during the marriage, or that he 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 denied the petition.

On appeal, the petitioner submitted the following additional evidence:

A copy of a psychiatric evaluation previously submitted to the director.

An affidavit of the petitioner previously submitted to the director.

An evaluation done by [REDACTED] a psychotherapist that states that the petitioner's wife was "emotionally and verbally insensitive and abusive" towards him.

In review, the evidence is insufficient to establish that the petitioner was the subject of extreme cruelty by his United States citizen spouse. The petitioner stated that his wife would leave home for a day or two at a time without telling him her whereabouts. The petitioner stated that he learned that his wife was spending nights with a former boyfriend and that when he confronted her about her infidelity, she would curse him and insult his manhood. The petitioner stated that he suffered depression as the result of his wife's conduct. In the absence of corroborating and more compelling evidence, the petitioner has failed to establish that he was the subject of extreme mental cruelty perpetrated by his wife. The petitioner submitted one psychiatric evaluation based upon a one-hour session and a psychotherapist's evaluation based upon a ninety-minute session with the petitioner. The psychiatrist stated in her diagnostic evaluation that the petitioner "was exposed to trauma experiences of prolonged severe mental and verbal abuse and abandonment by his wife." The psychiatrist failed to specify how long and what constituted trauma experiences. In a subsequent evaluation, the petitioner informed a psychotherapist that his wife had demanded sex from him when he was tired and made fun of the fact that he did not drink alcohol. He relayed that his wife pushed him into a wall during an argument and when they argued, she would throw dishes and silverware at him. It is noted that the petitioner failed to describe these incidents in his own affidavit. The psychotherapist's evaluation submitted for the first time on appeal describes instances of physical abuse that were not previously mentioned. The evidence is insufficient to establish that the petitioner was battered by or was the victim of extreme cruelty perpetrated by his United States citizen spouse.

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.