

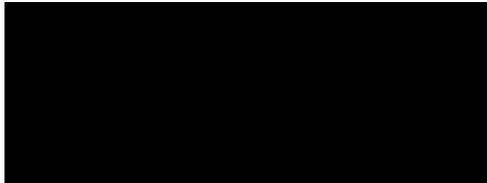
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APR 14 2004

FILE:



Office: VERMONT SERVICE CENTER

Date:

EAC 02 156 53931

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 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 he: (1) is the spouse of a citizen or lawful permanent resident of the United States; and (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. The director, therefore, denied the petition.

On appeal, counsel asserts that the director erred in denying the petition because the petitioner has provided sufficient evidence to establish that his wife was a United States citizen. Counsel further asserts that the petitioner provided sufficient evidence to demonstrate that during the time he lived with his wife, he was threatened and mistreated by her.

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 August 15, 1992. The petitioner married his alleged United States citizen spouse on June 29, 1993, in New York City, New York. On November 24, 2000, 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 spouse during their marriage.

PART I

8 C.F.R. § 204.2(c)(1)(i)(A) provides that the abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved.

The director noted that the petitioner furnished the marriage certificate of the petitioner and [REDACTED] and the New York State birth certificate of [REDACTED]. The petitioner hired a private investigator, and Ms. [REDACTED] was subsequently located. However, Ms. [REDACTED] attested that she is not, and never has been, married to the petitioner, she has never met the petitioner, nor did she ever sign or prepare immigration forms bearing her name or authorized anyone to use her name or birth records. The director maintained that it appears the petitioner's wife used an alias, and her true identity is unknown; therefore, the Service (now Citizenship and Immigration Services (CIS)) cannot confirm that his spouse is a citizen or a lawful permanent resident of the United States. The director determined that although the petitioner was requested on June 27, 2002, to submit evidence to establish the true identity of his wife, his response did not include evidence addressing this issue.

On appeal, counsel asserts that the woman whom the petitioner married identified herself as [REDACTED] and assumed that identity. His wife manifested to him that she was a United States citizen and even filed Form I-130, Petition for Alien Relative, on his behalf. He further asserts that whether that was her true name or not should not be held against the petitioner because in his subjective mind he believed her to be a United States citizen.

Despite counsel's assertion, the fact that the petitioner's spouse filed a Form I-130 petition is not evidence that the petitioner was eligible for issuance of an immigrant visa as the spouse of a U.S. citizen. In fact, it is noted that the Form I-130 was denied on September 7, 1994.

To be eligible for the benefits of 8 C.F.R. § 204.2(c)(1)(i)(A), the petitioner is required to be married to a citizen or lawful permanent resident of the United States, and the petition must be accompanied by evidence of citizenship or immigration status of the spouse. It had been determined that the petitioner's spouse was not Ms. Cancel; therefore, it is the burden of the petitioner to establish the U.S. citizenship of his spouse. The petitioner has not provided this evidence.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. § 204.2(c)(1)(i)(A).

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.

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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 on June 27, 2002. That discussion will not be repeated here. The director, however, noted that there are inconsistencies between the affidavits furnished by friends, indicating claims of physical abuse, and the petitioner's previously denied Form I-360, whereby the petitioner had denied that any physical abuse occurred during his marriage. He further noted that the petitioner had not submitted evidence in support of his claim that his marriage included mental/emotional abuse. Therefore, counsel's assertion that CIS did not give sufficient weight to the affidavits by the witnesses who attested to the abuse is not persuasive.

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." The record contains insufficient evidence to establish that the claimed abuse perpetrated toward the petitioner by his spouse was "extreme." The petitioner has failed to establish that he was battered by or was the subject of "extreme cruelty" as contemplated by Congress, and 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.