



U.S. Citizenship  
and Immigration  
Services

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FILE:

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EAC 03 179 50085

Office: VERMONT SERVICE CENTER

Date:

AUG 12 2004

IN RE:

Petitioner:

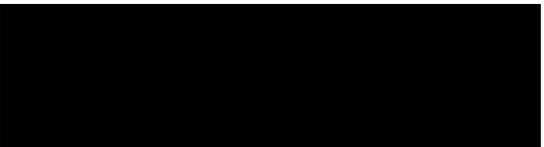
Beneficiary:



PETITION:

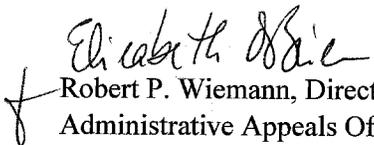
Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**DISCUSSION:** The preference visa petition was denied by the Acting 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 People's Republic of China 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 acting director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The acting director denied the petition, finding that the petitioner failed to establish that she has resided with the U.S. citizen spouse; has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse; is a person of good moral character; and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a brief and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

- (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

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 . . . 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; [and]

\* \* \*

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

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

*Abuse.* 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 abused 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 abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

*Battery or extreme cruelty.* For the purpose of this chapter, 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. Psychological or sexual abuse or exploitation . . . 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 . . . and must have taken place during the self-petitioner's marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

*Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

The record reflects that the petitioner last entered the United States as a K-1 fiancée on May 21, 2000. According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on July 2, 2000. The petitioner erroneously filed a Form I-751, Petition to Remove Conditions on Residence, on March 21, 2002, claiming to be the conditional resident spouse who has been battered or subjected to extreme mental cruelty, which was terminated by the director on June 23, 2003. On December 26, 2002, the petitioner filed a Form I-360

self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her 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 she 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).

The regulation at 8 C.F.R. § 204.2(c)(i) requires the petitioner to show that she has resided with her citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she had resided with her spouse, had been battered by or the subject of extreme cruelty by her spouse, is a person of good moral character and entered into the marriage in good faith, the acting director requested her to submit additional evidence. The petitioner initially responded to the request for additional evidence by asking for an extension of time in which to provide additional evidence. The acting director granted the petitioner's request for an extension. The petitioner subsequently resubmitted photographs of herself with her citizen spouse that she had previously provided to the acting director. In the request for additional evidence, the acting director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that she had resided with her spouse, that she married her spouse in good faith, and that she is a person of good moral character.

On appeal, counsel for the petitioner submits a brief and additional evidence. The additional evidence submitted should have been supplied in response to the acting director's request for additional evidence. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the acting director.

In review, the evidence is insufficient to establish that the petitioner had resided with her spouse and that she entered into the marriage in good faith. The evidence consists of the following:

- The petitioner's statements.
- The petitioner's brother's statement.
- A friend's statement.
- Photographs of the petitioner with her spouse.
- Letters written by the citizen spouse to the petitioner.
- A summary psychiatric evaluation of the petitioner.

It is noted that the petitioner failed to submit joint leases or mortgages. She failed to submit insurance policies, bank statements or bills listing a common address for the petitioner and her spouse. She failed to submit insurance policies in which the petitioner or her spouse is named as the beneficiary. She failed to submit bank statements, or tax records showing that she and her spouse shared accounts. She provided scant evidence of her courtship and no evidence of a wedding ceremony apart from a marriage certificate. She submitted no evidence of joint ownership of property. No children were born of the marriage. The evidence is insufficient to establish that the petitioner resided with her spouse or that she entered into the marriage in good faith. On appeal, counsel for the petitioner asserts that it is difficult to come up with additional evidence given that the petitioner and her spouse only cohabitated for one month. Nonetheless, the petitioner failed to meet her burden of proving her eligibility for this visa classification.

The evidence is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her citizen spouse. The evidence consists of statements of the petitioner and her brother, plus a psychiatric assessment. The petitioner stated that her husband "scolded [her], ordered [her] to leave, and threatened to deport [her]." The psychiatric assessment states that the petitioner informed the evaluator that her spouse demanded money, slapped and hit her. It is noted that the petitioner failed to file a complaint with the police against her spouse. She failed to submit reports and affidavits from court officials, or social workers. The petitioner failed to submit evidence that she sought medical treatment for any abuse she endured. She did not submit evidence that she sought refuge in a shelter or elsewhere. She did not obtain an order of protection against her spouse or take other legal steps to end the abuse. Her statements are insufficiently specific as to the exact harm she suffered from her spouse. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that she is a person of good moral character. In a request for additional evidence, the acting director specifically requested that the petitioner submit police clearances or records from each place she had resided for at least six months during the 3-year period before filing the Form I-360 petition. The petitioner failed to provide any clearances. The petitioner failed to overcome the director's objections to approving the petition.

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.