



U.S. Citizenship
and Immigration
Services

BA

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FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

AUG 16 2014

EAC 02 053 51092

IN RE:

Petitioner:

[Redacted]

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:

SELF-REPRESENTED

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 Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a citizen and native 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.

In a decision dated February 9, 2004, 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 because she remarried before filing the instant petition. The acting director denied the petition, finding that the petitioner failed to establish that she is the spouse of a citizen or lawful permanent resident of the United States, or had been within two years of filing the petition. The acting director denied the petition, in part, finding that the petitioner failed to establish she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On appeal, the petitioner submits a statement asserting that her remarriage should not bar her from obtaining the protection afforded by the Battered Immigrant Women Protection Act. The petitioner also submits an updated psychological assessment.

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 wed United States citizen [REDACTED] on January 27, 1997 in Bronx, New York and divorced on November 18, 1999. The record further reflects that the petitioner married [REDACTED] in 2001. On April 7, 2001, the petitioner filed a Form I-360 self-petition claiming abuse by her citizen spouse that was denied by the director because she had not proved that she had been battered by or been the subject of extreme cruelty by her citizen spouse; that she was a person of good moral character; or that she entered into the marriage in good faith. On November 26, 2001, a second 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, 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 acting director issued a Notice of Intent to Deny the Petition and granted the petitioner sixty days to submit additional evidence to establish her eligibility for classification as the battered spouse of a United States citizen.

The acting director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her Notice of Intent to Deny. The discussion will not be repeated here.

On appeal, the petitioner asserts that she should be accorded protection "nunc pro tunc regardless of [her] present spouse."

The petitioner failed to establish that she was the spouse of a citizen either at the time of or within two years prior to the filing of the petition.

Section 204(a)(1)(A)(iii)(II) of the Act requires that the self-petitioner establish that she is married to a United States citizen or permanent resident at the time of the filing of the Form I-360 petition with certain exceptions. The petitioner does not fall within one of the statutory exceptions to this requirement. She divorced her abusive spouse more than two years prior to the filing of the instant petition.

The petitioner's remarriage to one other than her abusive spouse prior to the filing of the petition is a bar to granting the petition.

Section 204 of the Act, as amended, does not provide that remarriage before the self-petition is filed or approved is permitted. There is no provision for the approval of such a self-petition. Section 204(h) of the Act provides in part that the "[r]emarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) . . . shall not be the basis for revocation of a petition approval under section 1155 of this title." By implication, remarriage does bar an alien from obtaining initial approval under this provision of law. Common sense dictates that relief under the Violence Against Women Act of 1994 (VAWA) is limited to those who are vulnerable to spousal or parental abuse. Once remarried, an alien is less vulnerable to abuse by his or her prior spouse.

The petitioner failed to establish that she has been battered by or subjected to extreme cruelty by her citizen spouse.

The petitioner submitted affidavits indicating that the petitioner's current spouse, Wilfredo Gomez, had been abusive towards the petitioner. The petitioner submitted a psychological assessment that outlined the petitioner's experience with her current spouse. This evidence is not relevant in the instant case.

The petitioner also submitted affidavits indicating that her first citizen spouse had harassed her and had threatened to have her deported. The affidavits do not provide sufficient specific or detailed information about the alleged abuse. In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse.

It is noted that the petitioner failed to file a complaint with the police against the alleged abusive spouse. In comparison, she did submit proof that she filed a complaint regarding her current spouse. She failed to submit reports and affidavits from court officials, counselors, or social workers. The petitioner failed to submit evidence that she sought refuge in a shelter or elsewhere. She did not obtain an order of protection against her alleged abusive spouse or take other legal steps to end the abuse. Her statements are insufficiently specific as to the exact harm she suffered from her alleged abusive 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 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.