



U.S. Citizenship  
and Immigration  
Services

B9

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: AUG 26 2004

IN RE:

Petitioner:

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:

[REDACTED]

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 on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Philippines 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 petitioner was placed in removal proceedings on June 11, 1997. The next scheduled hearing is set for February 23, 2005.

The 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; and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a brief and resubmits evidence previously submitted for the record.

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 B-2 nonimmigrant visitor on April 19, 1996. According to the evidence on the record, the petitioner was married to her first spouse, [REDACTED] for fifteen years. They divorced on July 27, 1996 in Los Angeles, California. The petitioner indicated that she met her second husband in June 1996 and they wed on August 11, 1997 in Long Beach, California. The record indicates that the petitioner's second spouse filed a Form I-130 petition on the petitioner's behalf, then informed

Citizenship and Immigration Services (CIS) that he wanted to withdraw the petition. Evidence reflects that the United States citizen spouse obtained a divorce from the petitioner on November 9, 2001. The petitioner filed the self-petition on October 11, 2002.

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, and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she had been battered by or the subject of extreme cruelty by her citizen spouse, she had resided with her spouse and entered into the marriage in good faith, the director requested that she submit additional evidence on May 23, 2003. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that she had resided with her spouse, that she is a person of good moral character, and that she married her spouse in good faith.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here.

On appeal, counsel for the petitioner "resubmits" previously provided documentation.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse. The evidence consists of the following:

- The petitioner's statements.
- The statement of a cousin of the petitioner that relays what the petitioner purportedly told her about her marital situation.
- The statement of the petitioner's citizen spouse's mother.
- A social worker's report indicating that the petitioner had been seen since September 2002, three years after the petitioner and her spouse separated, and that she suffered a condition caused by the "chronic, severe emotional victimization perpetrated by her husband."

It is noted that the petitioner failed to file a complaint with the police against her allegedly abusive spouse. She failed to submit reports and affidavits from court officials, or court counselors. The petitioner failed to submit evidence that she sought psychological or medical treatment for any alleged abuse she endured while she was purportedly residing with her spouse. She did not submit evidence that she sought refuge in a shelter or elsewhere. She did not obtain an order of protection against her allegedly abusive spouse or take other legal steps to end the abuse.

The petitioner stated that her husband forced her to have sex against her will. She said that her husband was verbally abusive towards her and threatened to slap her. She said that her husband choked her and refused to allow her to leave their home. The petitioner further stated that her husband was unfaithful to her and had affairs with other women. She said that he slapped, hit and kicked her.

The evidence is insufficient to establish that she was battered by or the subject of extreme cruelty by her citizen spouse, because she provided scant corroborative evidence and no contemporaneous evidence.

The director determined and the AAO concurs that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). The evidence submitted consists of the following:

- Copies of credit cards issued individually to the petitioner and her spouse for a joint account.
- Two joint bank account statements.
- Two joint federal tax returns.
- Evidence that the parties had a joint car insurance policy for a 1998 Isuzu.
- A life insurance policy showing the petitioner's husband was a beneficiary on her life insurance policy.
- Undated photographs taken of the petitioner's wedding.
- The petitioner's description of her and her husband's courtship.

The credit cards are not conclusive evidence of the bona fides of the marriage. There is no evidence that the parties used the cards and shared their credit card liabilities. The petitioner submitted two joint bank statements, one that indicates that the account was overdrawn. The petitioner's description of her courtship was cursory. She stated that she met her husband in June of 1996 at a party and that they began to date. She writes, "[o]ur relationship was great. He treated me well and was always very nice to me. We fell in love."

In a request for additional evidence, the director put the petitioner on notice that an investigation conducted in May 1999 had revealed that the petitioner maintained a joint car lease with her ex-husband, which was registered at [REDACTED] and that her second spouse had a vehicle registered with another female from February 10, 1998 to February 10, 1999, during his marriage to the petitioner. The director further informed the petitioner that an investigation conducted in May 1999 indicated that the building manager at [REDACTED] had been interviewed and he said that the petitioner and her first spouse [REDACTED] had lived there together for at least five years. Finally, the director said that the investigator spoke to a neighbor who stated that the petitioner had been seen on a daily basis [REDACTED]

[REDACTED] In reply to the request for additional evidence, the petitioner submitted an affidavit from her first husband stating that he and the petitioner had a joint car lease because they had cosigned for each other and because they considered any joint assets to essentially belong to their children. He further stated that the petitioner visited the children every day after work and would stay over when he was out of town. In a statement, the petitioner indicated that she had only been able to see her children on the weekend. The petitioner's statement as to the frequency of her visits to her children is inconsistent with the statement in the

record of her husband. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

As the evidence of record discussed above shows, the petitioner failed to establish that she had resided with her citizen spouse. In review, it is noted further that the petitioner asserted in her own statement that "we lived together in [redacted] in his parents' home." The petitioner's mother-in-law said in her statement that "[the petitioner] and my son [redacted] got married in August 1997. They both lived with me at [redacted]."

The director noted the discrepancy between the petitioner's assertion that she lived with her husband in [redacted] and the petitioner's mother-in-law's assertion that they had resided with her in [redacted]. Petitioner's counsel asserts that the petitioner referred to her home as being in [redacted] because she resided near the boundary lines for both cities.

In review, the discrepancy between referring to home as [redacted] is not dispositive. Nonetheless, the evidence is insufficient to show that the petitioner resided with her citizen spouse given the petitioner's inadequate rebuttal to the investigative report into the bona fides of her marriage.

Beyond the decision of the director, the petitioner is ineligible to file a self-petition because she failed to establish that she filed the self-petition while she was married to the U.S. citizen or that she falls within one of the statutory exceptions to this requirement. See Section 204(a)(1)(A)(iii)(II)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa). The evidence indicates that the U.S. citizen spouse obtained a default divorce on November 9, 2001. The self-petition was filed on October 11, 2002. While a statutory exception exists for a petitioner who files within two years of the termination of the marriage to the U.S. citizen spouse, the petitioner failed to prove that she falls within that exception. See Section 204(a)(1)(A)(iii)(II)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(CC). For this additional reason, the petition may not be approved.

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.