



U.S. Citizenship
and Immigration
Services

B7

[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:

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 disclosure of unwarranted
invasion of personal privacy

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DISCUSSION: The Director, Vermont Service Center denied the preference visa petition on January 21, 2003. The petitioner filed a motion to reopen and reconsider, which the director granted. The acting director affirmed the prior decision of the director. The petitioner filed a timely appeal and the matter is now before the Administrative Appeals Office (AAO) 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 denied the petition, finding that the petitioner failed to establish that he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse, and that he entered into the marriage in good faith.

On appeal, the petitioner resubmits evidence previously submitted to Citizenship and Immigration Services (CIS).

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.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on June 25, 1993 in Queens, New York. The petitioner claims that he and his citizen spouse lived together until January 1995.

On September 27, 2001, 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, 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." 8 C.F.R. § 204.2(c)(1)(vi).

Because the petitioner furnished insufficient evidence to establish that he has been battered by or subjected to extreme cruelty by his citizen spouse, resided with his spouse and entered into the marriage in good faith, he was requested on January 8, 2002, and March 8, 2002, to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty by his spouse, that he resided with his spouse and entered into the marriage 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, the petitioner submits evidence that he had previously submitted to CIS.

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

- A psychological assessment written by [REDACTED] in February 2003.
- An initial psychological assessment written by [REDACTED]
- Affidavits of the petitioner, his brother, sister-in-law and his friends.

The licensed social worker expressed her opinion that the petitioner's wife's "taunting and degradation . . . had a lasting effect on [the petitioner.]" The social worker wrote in her assessment that the petitioner's symptoms have plagued him since 2001, six years after the petitioner and his wife separated. In an initial assessment, the social worker said that the petitioner's wife verbally abused and humiliated the petitioner, threatened to sabotage his immigration status and often forced him to have sex. Two friends wrote that the petitioner's wife treated him badly. Another wrote that the petitioner's wife insulted him. A third affiant wrote that the petitioner's wife was violent and liked to control her husband. It is noted that the petitioner failed to provide any specific details in his own statement about the abuse or cruelty he endured from his wife. It is noted that he failed to seek refuge from the allegedly abusive spouse. He failed to seek an order for protection. The affidavits are insufficiently detailed to corroborate his allegations of abuse. The evidence is insufficient to establish that the abuse he suffered rose to the level of battery or extreme cruelty.

The evidence is insufficient to establish that the petitioner entered into the marriage in good faith. The evidence consists of affidavits of the petitioner, his brother, sister-in-law and friends. It is noted that the petitioner failed to submit evidence of joint ownership of property. He failed to submit evidence that he and his wife commingled assets, shared bank accounts and liabilities. He provided no evidence of his courtship and wedding ceremony. No children were born of the marriage.

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.