



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 disclosure of 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 native and citizen of Mexico 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 denied the petition, finding that the petitioner failed to establish that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On appeal, counsel for the petitioner submits a brief, a mental health assessment of the petitioner 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 record reflects that the petitioner wed United States citizen [REDACTED] on January 14, 2000 in [REDACTED]. The petitioner's spouse filed a Form I-130 petition on behalf of the petitioner. Action was terminated on the Form I-130 petition due to abandonment. On August 24, 2002, 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, her U.S. citizen spouse during their marriage. The petitioner indicated that she resided with her spouse from January 2000 until September 2000.

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.

¹ Olais is also spelled Olaez on the documentation submitted.

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 she has been battered by or the subject of extreme cruelty by her citizen spouse, the acting director requested additional evidence. The acting director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. The acting director stated in the request for additional evidence that although the petitioner suspected that her spouse had molested her son, a physician examined her son and said "everything looked normal," therefore the evidence was insufficient to establish that the petitioner's husband had subjected the petitioner's son to physical, sexual or emotional abuse.

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

On appeal, counsel for the petitioner submits additional evidence including numerous articles from professional journals, including: "Modeling Acts of Aggression and Dominance as Wife Abuse and Exploring their Adverse Health Effects," "Physical Health Consequences of Physical and Psychological Intimate Partner Violence," "Nonoffending Mothers: An Exploratory Study of Mothers Whose Partners Sexually Assaulted their Children," "Validating the Concept of Abuse," and "Immediate and Long-Term Impacts of Child Sexual Abuse." In a brief, counsel for the petitioner asserts that these articles "clearly recognize the type of behavior exhibited by [the petitioner's] husband and the profound and debilitating effects it can have on the female victims of this type of abuse." The articles are principally about child sexual abuse. While it is clear that child and spousal abuse can have profound and debilitating effects on the victims, the petitioner has not established that her husband sexually abused her child.

On appeal, counsel also submitted a psychological assessment of the petitioner. The assessment indicates that the petitioner has had several bouts of depression, two of which occurred before she met her citizen spouse. The assessment states that the petitioner believes her husband deceived her because he did not reveal his homosexuality until after they wed, and that she was "devastated" when he told her that he wanted to leave the marriage. The assessment further states that the petitioner's mental health status has been compromised since the break up of her marriage.

As further evidence that the petitioner was subjected to extreme cruelty by her United States citizen spouse, the petitioner submitted the following additional evidence:

- The petitioner's statement.
- A letter of a mental health specialist dated June 5, 2003 stating that the petitioner received a mental health assessment and was assessed to have Generalized Anxiety Disorder.
- An unsigned letter of Aaron Grigg, a mental social worker stating that the petitioner sought counseling for herself and her son but due to insurance problems, stopped counseling.
- An affidavit of a Family Support Worker stating that the petitioner told her that she felt depressed and that her then five year-old son was suicidal.

The petitioner stated that her husband raised his tone of voice when he was angry. She said that he yelled at her and insulted her. She said that he made her have sex "the way he wanted," which was "sexual mistreatment" in her mind. The petitioner has not established that the mistreatment she received rises to the level of "extreme cruelty."

Counsel cites a Ninth Circuit case for the proposition that "extreme cruelty encompasses abusive actions that may not initially appear violent, but that are manipulative tactics aimed at ensuring the perpetrator's dominance and control. *Luis Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003). Counsel asserts that the petitioner's spouse's conduct² rises to the level of extreme cruelty. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.

² Psychological manipulation, keeping tabs on her and limiting her social contacts.