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U.S. Citizenship  
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B9



FILE:

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EAC 02 053 51130

Office: VERMONT SERVICE CENTER

Date: DEC 03 2004

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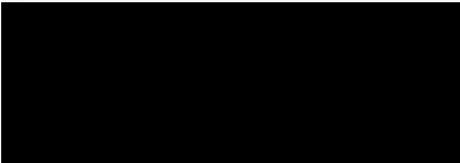
Petitioner:

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.

*Mai Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Acting Director, Vermont Service Center. The petitioner filed a timely appeal and the Administrative Appeals Office (AAO) remanded the case back to the director for further consideration and the entry of a new decision. The matter is again before the AAO on certification. The prior decision of the director will be affirmed and the petition will be denied.

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 director initially 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. Once remanded to the director, the director requested additional evidence. The petitioner responded to the request for additional evidence. In a subsequent decision, the director determined that the petitioner failed to establish that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, entered into the marriage in good faith, or resided with the U.S. citizen spouse. The director properly gave notice of certification to the petitioner.

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.

According to the evidence on the record, the petitioner and her U.S. citizen spouse were both previously married prior to their marriage to one another. The petitioner wed [REDACTED] in November 1993 in Mexico. They divorced on May 27, 1998. The petitioner's U.S. citizen spouse was divorced on May 12, 2000, three months before he wed the petitioner. The petitioner's U.S. citizen spouse is seven years junior in age to the petitioner. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The petitioner filed a Form I-485 simultaneously with the Form I-130. On November 26, 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, 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)(1)(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.

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:

- An affidavit of the petitioner's former employer.
- The statement of an individual for whom the petitioner babysat.
- The statement of a former landlady.
- The statement of a former girlfriend of the petitioner's spouse.
- Court records indicating that the petitioner's spouse pled guilty to a charge of patronizing a prostitute on January 26, 1999.
- Court records indicating that the petitioner's spouse was arrested and charged with keeping a house of prostitution and unlawful use of a weapon in December 1999. The records indicate that the case was dismissed (nolle prosequi).
- A letter written by an employee at a women's shelter.
- An intake form completed by the petitioner at the women's shelter on June 13, 2002.
- A supplemental report to the police dated November 7, 2001.

In the supplemental report, the petitioner wrote that on October 11, 2001, she went to the store with her children and when she returned, her husband told her that she could not go out without his permission in the future. She

also wrote that her husband pushed and beat her. It is noted that only one page of the four-page report was submitted to the Citizenship and Immigration Services. She further indicated on the supplemental report that there had been at least two incidents of domestic violence. It is noted that the petitioner submitted an intake form that was completed at a women's shelter on June 13, 2002, more than eight months after the purported abuse. 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 petitioner submitted her husband's criminal history. It is noted that the history predates the parties' marriage in 2000 and that none of the records indicate that the petitioner was involved.

In her initial decision, the director determined that the petitioner failed to establish that she had resided with her U.S. citizen spouse during their marriage. On remand, the director first determined that the record contained sufficient evidence to establish the petitioner resided with her spouse; however, on certification, the director indicated that the evidence submitted by the petitioner in response to the request for additional evidence brings into question the credibility of the evidence submitted to show she resided with her citizen spouse during the marriage.

In review, the evidence is insufficient to establish that the petitioner resided with her citizen spouse during the marriage. The evidence consists of the following: the petitioner's statement that she and her husband "continued to live together until the end of November 2001;" and the petitioner's landlord's statement that indicates that the petitioner and her spouse lived at the landlord's home, and that the petitioner's spouse moved out in October 2001. The petitioner failed to submit evidence such as joint leases, mortgages or rental agreements. She failed to submit insurance policies, bills or financial documents listing a common address for the petitioner and her spouse. She failed to submit affidavits of friends and family verifying that the petitioner resided with her spouse.

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). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. The petitioner provided CIS with several affidavits and photographs that she says are of her and her citizen spouse. In the record, the petitioner's citizen spouse previously submitted his photograph to CIS in connection with the Form I-130 petition. The photograph submitted with the Form I-130 petition and those submitted on appeal are not of the same man. The petitioner failed to submit evidence such as insurance policies in which she or her spouse is named as the beneficiary. She failed to submit bank statements, and records and other documents showing that she and her husband shared accounts. She failed to submit evidence of their courtship and wedding. She did not submit evidence of joint ownership of property. The petitioner asserted that she had two children by her citizen spouse, but she failed to submit conclusive evidence such as her children's birth certificates. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

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.