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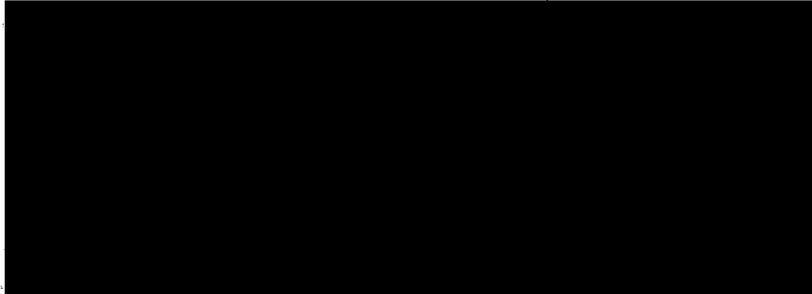
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20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
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Services

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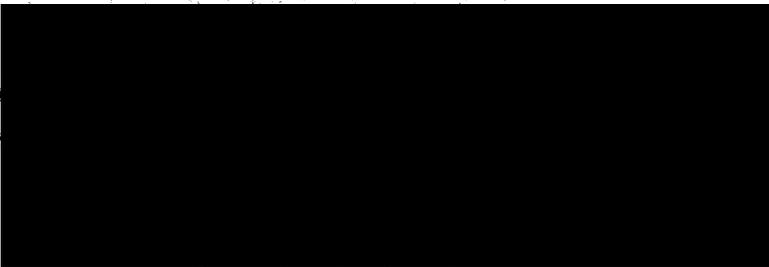


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Office: VERMONT SERVICE CENTER

Date: DEC 03 2004

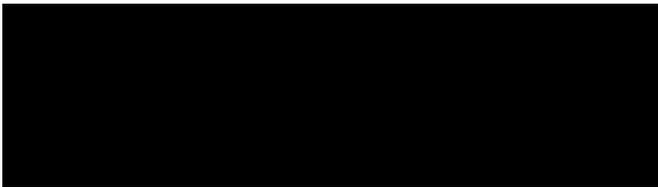
IN RE: Petitioner:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

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 director denied the petition, finding that the petitioner had failed to establish that she had been abused or subjected to extreme cruelty by her citizen spouse and that she entered into the marriage in good faith.

On appeal, the petitioner submits 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 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 in the United States 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;

* * *

(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)(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 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 record reflects that the petitioner wed [REDACTED] a U.S. citizen, on May 1, 2000 in El Paso, Texas. The petitioner’s citizen spouse filed a Form I-130 petition on her behalf. The petitioner filed a Form I-485. On June 20, 2001, the petitioner was granted conditional permanent resident status. On January 24, 2003, the petitioner filed a Form I-360, 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.

Two issues to be addressed in this proceeding is whether the petitioner established that she has been battered

or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and whether she established that she entered into the marriage in good faith.

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).

Because the petitioner furnished insufficient evidence to establish that she has met this requirement, she was requested on November 17, 2003, to submit additional evidence. The director listed evidence she may submit to establish battery or extreme mental cruelty.

The evidence on the record regarding abuse is as follows:

- The petitioner's statement.
- The petitioner's daughter's statement.
- Letters written by friends and the sister of the petitioner.
- Photographs of the petitioner displaying bruises on her thighs.
- A letter written by a victim's advocate at a battered women's shelter.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen husband. In the petitioner's initial statement, she failed to mention any physical abuse. In response to a request for additional evidence, the petitioner submitted a letter written by an advocate at the El Paso Shelter for Battered Women dated August 5, 2002. The advocate recounted what the petitioner had told her, i.e., that her husband physically abused her by pushing and shoving her around, forcing her to have sex, and verbally denigrating her. The petitioner submitted another affidavit in response to the request and stated that her husband pulled and threw her and managed to hit her on the leg.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, and court officials. She did not obtain an order of protection against her husband or take other legal steps to end the abuse. The petitioner's testimony was internally inconsistent. On the Form I-360 petition, she indicated that she lived with her spouse until January 2002. In an affidavit dated January 20, 2004, she indicated that she was still residing with her husband on June 11, 2002, when he allegedly hit the petitioner on the leg, causing bruises. The petitioner's daughter's affidavit indicates that the petitioner's spouse vanished two days after his birthday, which was on May 28, 2002; hence, the testimony of the petitioner and her daughter are inconsistent. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The next issue to be addressed is whether the petitioner established that she had entered into the marriage with

her citizen spouse in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). The record contains scant evidence that the petitioner and her citizen spouse resided together. The petitioner submitted a copy of a Capital One Visa card with the names of the petitioner and her spouse, but she did not provide any statements to show that this was an active account. There is no evidence that they commingled their assets or shared liabilities during their marriage. The petitioner submitted a copy of her 2001 federal income tax return that shows she filed as a single individual. The petitioner included photographs of herself, her spouse and her daughter. Photographs are not persuasive evidence on the bona fides of the marriage. The evidence is insufficient to establish that the petitioner entered into the marriage with 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.