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U.S. Department of Homeland Security
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U.S. Citizenship
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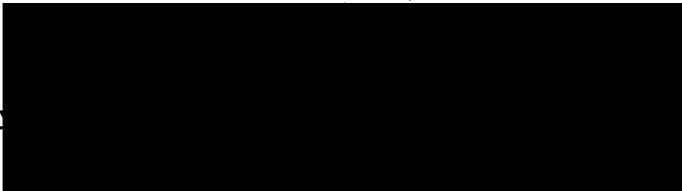
Office: VERMONT SERVICE CENTER

Date: DEC 14 2004

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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.

Mari Johnson

6 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Columbia 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 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 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 record reflects that the petitioner entered the United States on January 20, 2000 and wed U.S. citizen [REDACTED] on May 5, 2000 in Tarrant County, Texas. The petitioner's wife filed a Form I-130 petition on the petitioner's behalf on August 30, 2000. The petitioner's wife initiated divorce proceedings and his marriage to [REDACTED] was terminated on March 6, 2002. Nine months after the divorce, 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 had been battered or subjected to extreme cruelty by his citizen spouse, he was requested on September 8, 2003 to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. In reply, the petitioner requested an additional 60 days in which to respond. Subsequently, the petitioner submitted the following additional evidence:

- The petitioner's cover letter to Citizenship and Immigration Services (CIS) dated October 27, 2003.
- A letter dated October 27, 2003 from an intern at a Fort Worth, Texas shelter indicating that the petitioner informed the intern that he had suffered verbal, psychological and "physical abuse (throwing of objects as threat).
- A letter written by Rev [REDACTED] a priest in the Lake Charles, Louisiana Diocese stating that he gave the petitioner guidance and moral support to help him overcome his "frustrations, fears and disappointments caused by his broken marriage."
- A letter dated October 20, 2003 written by [REDACTED] at the Semillas Clinic stating that the petitioner had been seen on three occasions in the month of October 2003. Mr. [REDACTED] wrote:

[The petitioner] reports that [his wife] started demonstrating her jealousy, possessiveness . . . [and became] controlling and demanding. He reports that he began to feel isolated because she did not trust him to have visitors come

to their home or for him to take and place telephone calls. [The petitioner] states this situation become [sic] intolerable but also offensive to him. . . .

During May 2001, he learned that [his wife] had been unfaithful . . . [s]he . . . [became] pregnant [by another man].

The psychological and emotional impact from being in this relationship can be assessed to be within the boundaries and definition of domestic violence.

The 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 director determined and the AAO concurs that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his wife. The conduct described does not rise to the level of extreme cruelty. The petitioner said he suffered because his wife was unfaithful. Infidelity does not equate to extreme cruelty. Therapist [redacted] opined that "the impact from being in [the marital] relationship can be assessed to be within the boundaries and definition of domestic violence." Mr. [redacted] definition of domestic violence is not binding on the Citizenship and Immigration Services. The Rev. [redacted] described the petitioner's emotional response to "disappointments caused by his broken marriage." Again, the treatment described does not rise to the level of extreme cruelty as defined in the statute and the regulations.

On appeal, the petitioner submits additional evidence. If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The director denied the petition, in part, finding that the petitioner had failed to establish that he entered into the marriage in good faith. The evidence on the record consists of the following:

- Photographs of the petitioner with his spouse and of the petitioner in a classroom.
- Rental receipts numbered sequentially (130009, 130010, 130011, etc.) for the period of May through August 2000, January 2001 through May 2002.
- The petitioner's statement dated November 15, 2002.
- The petitioner's letter dated October 27, 2003.
- The petitioner's divorce decree in which the court found that the parties had never lived together as husband and wife.

It is noted that the petitioner failed to submit copies of insurance policies in which the petitioner or his spouse was named as the beneficiary. He failed to submit financial documents that showed that he and his wife shared accounts and other responsibilities. The petitioner failed to submit evidence of joint ownership of property. No children were born of the marriage. The evidence is insufficient to establish that the petitioner married his citizen wife 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.