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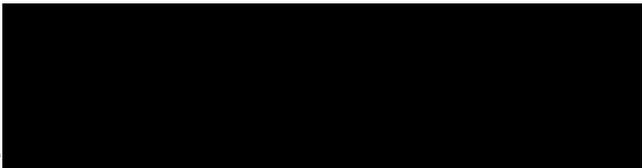
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER Date: DEC 14 2004
EAC 03 029 54352

IN RE: Petitioner: [REDACTED]
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:

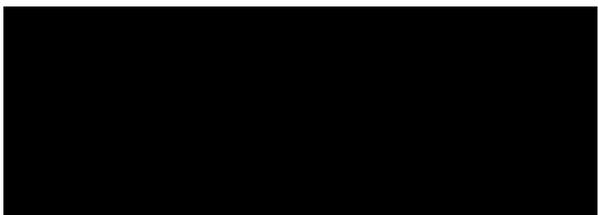
SELF-REPRESENTED

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.

Maif Johnson

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 Ecuador 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.¹

The director denied the petition, finding that the petitioner failed to establish that he has resided with his U.S. citizen spouse, has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse, that he is a person of good moral character, and that he entered into the marriage in good faith.

On appeal, the petitioner asserts that he wed in good faith and that his wife "was very bad" with him. He further states that he lived with his wife for more than 65 days before they wed and asks if it is necessary to live with violence for more than 65 days.

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

¹ The petitioner submitted a signed Form G-28, Notice of Appearance as Attorney or Representative, which was signed by an unaccredited representative. The Citizenship and Immigration Services does not recognize unaccredited representatives as representatives. See 8 C.F.R. § 292.2.

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.

According to the evidence on the record, the petitioner wed naturalized U.S. citizen [REDACTED] on July 11, 2002 in [REDACTED]. On the Form I-360 petition, the petitioner indicated that he entered the United States illegally on May 7, 1989. The evidence further indicates that the petitioner's wife filed a Form I-130 petition on his behalf on September 6, 2002 and withdrew the petition on April 1, 2003. The petitioner filed a Form I-485 with the Form I-130 and withdrew it on September 26, 2002. The petitioner filed a Form I-360 claiming eligibility for a preference visa on November 4, 2002.

The director determined that the petitioner failed to establish that he resided with his U.S. citizen wife. On appeal, the petitioner states that he resided with his soon-to-be-wife for more than 65 days preceding the marriage. The regulation requires that the petitioner establish that he resided with his citizen spouse *during* the marriage. The sole evidence in the record regarding whether the petitioner and his wife resided together consists of the petitioner's statement. He failed to provide copies of joint leases or mortgages, and insurance policies listing a common address for the petitioner and his spouse. He failed to submit utility invoices listing a common address for the petitioner and his spouse. He failed to submit bank statements and other financial records listing a common address for the petitioner and his 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 evidence is insufficient to establish that the petitioner resided with his citizen spouse.

The director determined that the petitioner had failed to establish that he had been abused by or the subject of extreme cruelty by his citizen spouse.

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)(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)(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 was abused or subjected to extreme mental cruelty by his U.S. citizen spouse, he was requested on May 22, 2003 to submit additional evidence. The director listed evidence he may submit to establish battery or extreme mental cruelty. The record contains the following evidence regarding abuse and extreme cruelty:

- The petitioner's statement.
- Statements of two of the petitioner's relatives.
- An illegible victim's notification in which the petitioner indicated that he did not want a civil restraining order to protect him from his wife.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, court officials, medical personnel, social workers or other social service agency personnel. He failed to submit evidence that he sought refuge in a shelter for the abused. The single victim's notification dated September 16, 2002 provides no information regarding a domestic violence incident. In his statement, the petitioner indicated that his wife was often drunk and called him names and in one instance she destroyed his cell phone. On appeal, he states that his wife "was very bad with me." His assertion on appeal is insufficiently specific as to the exact harm he suffered from his wife. Again, 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. at 190. The harm he described does not rise to the level of abuse or extreme cruelty as defined in the regulations.

The director denied the petition, in part, finding that the petitioner had failed to establish that he is a person of good moral character. Because the petitioner furnished insufficient evidence to establish that he is a person of good moral character, he was requested on May 22, 2003 to submit additional evidence. The director listed evidence the petitioner could submit to establish good moral character. In response to the request for additional evidence, the petitioner failed to provide CIS with any police clearances. On appeal, the petitioner submits a police clearance from Union City, New Jersey. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

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.

On May 22, 2003, the director requested the petitioner to submit additional evidence to establish that he entered into the marriage in good faith. The director listed evidence the petitioner could submit to establish that he entered into the marriage in good faith. In response, the petitioner submitted a letter from an unaccredited representative. The petitioner failed to provide copies of insurance policies in which he or his spouse is named as the beneficiary. He failed to submit copies of bank statements, tax records and other documents showing that he shared accounts with his wife. He failed to submit evidence of joint ownership of property. No children were born of the marriage. The statements submitted are insufficiently specific to verify the relationship. The director determined that the petitioner failed to establish that he entered into the marriage in good faith and the AAO concurs.

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.