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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



EAC 01 198 51012

OFFICE: VERMONT SERVICE CENTER

Date:

DEC 14 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:

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.

Mari Johnson

eo
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 29-year old native and citizen of Bangladesh 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, that he is a person of good moral character and that he entered into the marriage in good faith.

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.

According to the evidence on the record, the petitioner wed U.S. citizen [REDACTED] on July 1, 1999 in Hudson, New York. On the Form I-360 petition, the petitioner indicated that he entered the United States illegally on December 6, 1997. The evidence is contradictory as to when, where and for how long the petitioner and his U.S. citizen wife resided together. On April 30, 2001, 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, his U.S. citizen spouse during their marriage.

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, 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 there is no allegation that his marriage to a U.S. citizen was not entered into in good faith. He further asserts that he suffered extreme cruelty in the context of his ethnic community. He also asserts that the director's determination that the petitioner "is not of good moral character is vague and overbroad."

The director determined that the petitioner failed to establish that he entered into his marriage with a U.S. citizen in good faith. The AAO concurs.

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 evidence on the record relating to the bona fides of the marriage is as follows:

- The petitioner's statements.
- Affidavits of friends of the petitioner that state that the petitioner and his wife were happily married.
- A single month's statement for a joint bank account.
- One blank check from a joint bank account.
- One photograph of a civil wedding ceremony.

The affidavits provide scant detail regarding the petitioner and his wife's courtship and marriage. The petitioner provided no information regarding his courtship or how he met his wife

The petitioner failed to submit evidence of insurance policies in which the petitioner or his wife is named as the beneficiary. He failed to submit tax records or other financial records showing that the petitioner and his wife shared financial responsibilities. He provided no evidence that he and his wife acquired joint ownership of property. No children were born of the marriage. The evidence is insufficient to establish that the petitioner wed his U.S. citizen wife in good faith.

On appeal, the petitioner asserts that he was subjected to extreme mental cruelty by his U.S. citizen wife according to the standards of his ethnic community.

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.

On appeal, the petitioner asserts that the abuse he endured is extreme cruelty in his culture.

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 July 18, 2001 and July 19, 2002 to submit additional evidence. The director listed evidence he could have submitted to establish battery or extreme mental cruelty. The director further indicated to the petitioner that the

evidence was insufficient in a subsequent Notice of Intent to Deny the petition dated September 23, 2002. In her decision, the director described and discussed the evidence on the record in detail. That discussion will not be repeated here. The petitioner alleged that his wife threatened to have him deported, harassed him and physically abused him. He alleged that his wife pushed, cursed and slapped him on one occasion. He further stated that when he found his wife sleeping with another man, Mr. [REDACTED] his wife bit the petitioner on the shoulder, punched and kicked him. The petitioner submitted one police incident report that states that the petitioner alleged that his wife had pushed and slapped him during a verbal argument and that no injuries were reported. In a separate incident, the petitioner alleged that his wife's friend, Mr. [REDACTED] stabbed him in the chest with a nail clipper. According to a hospital report, the petitioner stated that his roommate caused a superficial stab wound to his chest. The petitioner obtained a temporary restraining order upon Mr. [REDACTED] claiming Mr. [REDACTED] had harassed him. The record is replete with contradictory evidence as to when the chest wound was caused and by whom. The affidavits are insufficiently specific as to the exact harm he suffered from his wife. The evidence is insufficient to establish that the petitioner was abused or subjected to extreme battery by his spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish he is a person of good moral character to be eligible for this classification.

In response to multiple requests for additional evidence to establish good moral character, the petitioner submitted the following record (NYSID 8936957M):

Arrest September 26, 2000.

240.30 PC (aggravated harassment in the second degree).

Docket # [REDACTED]

Dismissed January 16, 2001 - speedy trial provision.

Arrest October 9, 2000

215.50 PC (criminal contempt in the second degree).

Docket # [REDACTED]

Dismissed January 16, 2001 - speedy trial provision.

Arrest November 21, 2000.

155.25 PC (petit larceny) and 240.26 PC (harassment in the second degree).

Docket # [REDACTED]

Dismissed December 7, 2001 - speedy trial provision.

Arrest November 21, 2000

The petitioner was initially charged with 160.15 PC (first degree robbery causing serious injury, a class D felony) and 120.00 PC (assault). The charges were subsequently amended to 120.00 PC (assault in the third degree) and 240.26 PC (harassment in the second degree).

Docket # [REDACTED]

Dismissed December 7, 2001 - speedy trial provision.

Arrest January 16, 2001.

215.10 PC (tampering with a witness in the fourth degree); 120.15 PC (menacing in the third degree); 215.50 PC (criminal contempt in the third degree); 240.50 PC (falsely reporting an incident in the third degree); 240.26 PC (harassment in the second degree); 215.11 PC (tampering with a witness in the third degree. Class E Felony).

Docket # [REDACTED]
Dismissed December 7, 2001 – speedy trial provision.

Arrest March 3, 2001
215.51 PC (criminal contempt in the first degree); 240.30 PC (aggravated harassment in the second degree).
Docket # [REDACTED]
Dismissed December 7, 2001 - speedy trial provision.

Arrest July 13, 2001.
240.30 (aggravated harassment in the second degree).
Docket # [REDACTED]
October 22, 2001: pled guilty and sentence imposed: one year conditional discharge with one-year order of protection.

Section 101(f) the Act, 8 U.S.C. § 1101(f), sets out criteria that establish a lack of good moral character. This list of criteria is not exhaustive. The fact that a person does not meet the criteria at 8 U.S.C. § 1101(f) does not preclude a finding that for other reasons such person is not of good moral character. Section 101(f)(8) of the Act, 8 U.S.C. § 1101(f)(8).

Citizenship and Immigration Services (CIS), as a matter of discretion, may determine that an alien lacks good moral character even if the alien does not fit one of the statutorily defined classes.

In exercising its discretion, CIS must weigh both positive and negative factors. *See Torres v. Guzman v. INS*, 804 F.2d 531 (9th Cir. 1986).

The evidence on the record shows the following:

Negative factors:

The petitioner has an extensive criminal history. He has been arrested and charged with violating criminal laws on seven occasions. The charges were very serious. The petitioner was charged with tampering with a witness in the third degree, a felony, assault, and with criminal contempt, to name a few.

The petitioner has no immediate family in the United States.

The petitioner claims he entered the country illegally, showing a disregard for the immigration laws of the United States.

Positive Factors:

There are no apparent positive factors.

As a matter of discretion, AAO determines that the petitioner is not a person of good moral character.

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.