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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B9



FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 14 2004  
EAC 02 142 52156

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.

*Mari 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 the Dominican Republic 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 she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship, 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, and entered into the marriage to the citizen 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 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 wed [REDACTED], a United States citizen, on February 4, 1995 in Bronx, New York. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The petitioner filed a Form I-485 application to register permanent residence or adjust status. The district director denied the Form I-485 on March 6, 2002 because the Form I-130 petition had been denied. On March 21, 2002, 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.

Because the petitioner furnished insufficient evidence to establish that she is a person of good moral character, that she married her spouse in good faith, and that she has been the subject of battery or extreme cruelty committed by her spouse, she was requested on September 13, 2002, to submit additional evidence. The director listed evidence the petitioner could submit to establish that she was battered or subjected to extreme cruelty by her husband, that she married her spouse in good faith, and that she is a person of good moral character.

The director, in her notice of intent to deny, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here. The petitioner failed to respond to the notice of intent to deny.

On appeal, the petitioner resubmits previously provided documentation.

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:

- The petitioner's affidavit dated March 18, 2002.
- The affidavits of four friends of the petitioner.
- Notes from the petitioner's therapy visits with certified social worker Irene Torres.
- Notes from Irene Torres description of the petitioner's victimization and an assessment.

It is noted that the petitioner failed to file a complaint with the police against her spouse. She failed to submit reports and affidavits from court officials or police. The petitioner failed to seek psychological counseling until four or five years after she and her spouse separated. 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 and those of her friends 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). Further, the friends' statements were primarily based upon second-hand information.

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). The petitioner provided Citizenship and

Immigration Services (CIS) with her own statement and her marriage certificate. She failed to submit evidence of insurance policies in which she or her spouse was named as the beneficiary. She failed to submit bank statements, tax records and other financial documents that show she shared accounts with her husband. She provided no evidence of her courtship or wedding ceremony except for her marriage certificate. She did not submit evidence of joint ownership of property. No children were born of the marriage. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

In a notice of intent to deny, the director noted that the session notes provided by the therapist indicated that the petitioner was divorced, so the director specifically requested evidence of the legal termination of her marriage to her citizen spouse. The petitioner failed to respond to this request. In review, the notes of the third visit with Irene Torres dated July 18, 2002 indicate that the petitioner had divorced her abusive spouse. The notes mention the petitioner's "ex-husband." In [REDACTED] assessment of the petitioner's mental health [REDACTED] states that the petitioner spoke of her "second husband." The evidence in the record includes [REDACTED] assessment of the petitioner's victimization that states "[the petitioner] is not divorced from her legal husband but has not seen him since 1998." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence is insufficient to establish that the petitioner is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that she is a person of good moral character. In a request for additional evidence, the director specifically requested that the petitioner submit police clearances or records from each place she had resided for at least six months during the 3-year period before filing the Form I-360 petition and if the police clearance was researched by name only, she must supply the law enforcement agency with all aliases she had used, including her maiden name, if applicable. The petitioner submitted a police clearance from New York City that was researched on only one rendition of her name. The record indicates that the petitioner has used more than one rendition of her name, including [REDACTED] and [REDACTED]. The evidence is insufficient to establish that the petitioner is a person of good moral character. For this additional reason, the petition may not be approved.

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.