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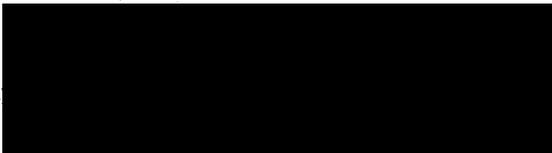
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]
EAC 03 115 53778

Office: VERMONT SERVICE CENTER

Date DEC 27 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

 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 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 he was the spouse of a citizen or lawful permanent resident of the United States within two years of filing the instant petition. The director denied the petition, in part, finding that the petitioner failed to establish that he had resided with his citizen spouse, had been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse, and entered into the marriage in good faith.

On appeal, the petitioner “urge[s] a new review of [his] case for substantial abuse from 1995 to 2000.” The petitioner failed to address all of the director’s grounds for denying the petition.

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 had been married and divorced twice. He first wed [REDACTED] the Dominican Republic. The marriage was terminated on December 19, 1994. The petitioner wed U.S. citizen [REDACTED] on September 14, 1995 in Manhattan, New York. According to the evidence in the file, the petitioner's citizen spouse filed a Form I-130 petition on the petitioner's behalf on March 26, 1996. On June 16, 1999, action on the Form I-130 petition was terminated due to abandonment. On the Form I-360, the petitioner indicated that he and his citizen spouse separated in June 1999. In response to a request for additional evidence, the petitioner indicated that he and his citizen wife had divorced but failed to provide the director with proof of the legal termination of the marriage. On February 27, 2003, 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 director denied the petition, in part, finding that the petitioner had failed to establish that he had been married to the allegedly abusive citizen spouse within two years of filing the instant petition. According to psychotherapy notes that the petitioner submitted to the director, the petitioner divorced his citizen wife in 2001. In a request for additional evidence, the director specifically asked the petitioner whether he was still married or divorced. The petitioner indicated that he had divorced his allegedly abusive spouse, but failed to submit evidence of the divorce. On appeal, the petitioner indicated that he endured abuse by his citizen wife from 1995 to 2000 but again failed to submit evidence of the legal termination of their marriage. Further, on appeal, the petitioner indicates that his citizen wife had previously been married, but he failed to submit proof that her first marriage had been legally terminated before she wed the petitioner. Accordingly, the petitioner has not established that he was married to his citizen spouse within two years of the filing of the petition.

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 has been battered or subjected to extreme cruelty by his citizen spouse, he was requested on January 20, 2004 to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty.

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 discussion will not be repeated here.

On appeal, the petitioner asserts that the evidence is sufficient to establish that the petitioner has been the subject of extreme cruelty perpetrated by the citizen spouse during the marriage. The petitioner states the following reason for the appeal:

I am appealing in good faith because the BCIS-Examiner did not give any value to the report by the therapist dated 2/11/03 addressing my hardship when coping with my wife's abusive conduct, forcing me to cohabit after she visited her ex-spouse and father of her children living with the father and grand-mother. When I had questioned the visitations for extended periods she had physically reacted: punching me knowing that I could not respond because of my boxing experience and she would charge me with domestic violence. I had withstand [sic] her physical abuses only because I was afraid of consequences with the criminal justice system. She had been taking advantage of my fate in the United States because she is a citizen of this nation and I had been taking all of her abuses like a man, responsible for a family abroad, and helping her to live and care for her children as well. During a long period of time she claimed that I was the father of her 1998 child. My mood, agony, stress, pain as a betrayed spouse, all of them together, forced me to separate legally and to this date I am trying to keep away from the past, but it's not easy to forget years of mental suffering and abuses.

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.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse. The evidence consists of the following:

- The petitioner's statements.
- Notes from psychotherapy sessions that the petitioner had on February 11, 2003, March 11, 2003, April 5, 2003 and May 1, 2003.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, court officials, medical personnel, or other social service agency personnel. The petitioner failed to seek refuge in a shelter for the abused. He did not obtain an order of protection against his spouse or take other legal steps to end the abuse. He did not seek counseling until at least three years after he and his wife separated.

The director determined that the treatment the petitioner received from his wife is not abuse or extreme cruelty as defined in the regulations. The AAO concurs. The conduct described does not rise to the level of extreme cruelty. The petitioner said he suffered because his wife left him. Abandonment does not necessarily equate to extreme cruelty. The evidence is insufficient to establish that the petitioner was abused or the subject of extreme cruelty by his citizen spouse during their marriage.

The director denied the petition, in part, finding that the petitioner had failed to establish that he married his citizen wife in good faith and resided with her during their marriage. In a request for additional evidence, the director indicated the types of evidence that the petitioner could submit to establish the bona fides of his marriage and their joint residence. The sole evidence submitted consists of the petitioner's statements and session notes with a therapist. He failed to submit joint leases, mortgages or rental agreements. He failed to submit insurance policies listing a common address for the petitioner and his spouse. He failed to submit bills and bank statements listing a common address for the petitioner and his spouse. The petitioner failed to submit insurance policies in which he or his spouse was named as the beneficiary. He failed to submit bank statements, tax records and other documents that show he shared accounts with his wife. He failed to submit evidence of joint ownership of property. No children were born of the marriage.¹ He did not submit evidence of their courtship, marriage celebration, or life together. The evidence is insufficient to establish that the petitioner married his citizen wife in good faith and that they resided together.

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.

¹ The petitioner indicated that his wife had a child during the marriage but that the child was not his.