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U.S. Citizenship  
and Immigration  
Services



B9

FILE:



Office: VERMONT SERVICE CENTER

Date: DEC 27 2004

EAC 03 009 52091

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*

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 Ghana who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), § 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 had failed to establish that he was abused or subjected to extreme cruelty by his wife and that he entered into the marriage in good faith. The director further determined that because the petitioner married a U.S. citizen after he was placed in removal proceedings, the petitioner must establish that he either resided outside the U.S. for a two-year period beginning after the date of the marriage or establish by clear and convincing evidence that the marriage was entered into in good faith and that the marriage was not entered into for the purpose of procuring the alien's entry as an immigrant and that no fee or other consideration was given for the filing of a preference visa with respect to the alien spouse.

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 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.

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.

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).

The record reflects that the petitioner filed an application for asylum in June 1994 and was placed in removal proceedings on October 4, 1995. The immigration judge granted the petitioner voluntary departure until June 1, 1997. The petitioner wed U.S. citizen [REDACTED] on May 29, 1997 in Manhattan, New York. The petitioner's wife filed a Form I-130 petition on the petitioner's behalf on November 3, 1997. The petitioner filed a Form I-360 on October 2, 2002, 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.

Two issues to be addressed in this proceeding are whether the petitioner established that he has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and whether he established that he entered into the marriage in good faith.

Because the petitioner furnished insufficient evidence to establish that he entered into the marriage in good faith, he was requested to submit additional evidence. The director listed evidence he could submit to establish that he entered into the marriage in good faith. In response to the request for additional evidence, counsel for the petitioner submitted the following:

- A termination summary from a marriage and family counselor.
- The petitioner's statement in support of a marriage exemption.
- The petitioner's statement.
- A lease.
- Copies of joint bank account statements.
- An electric bill for the month of September 2001 showing the petitioner and his wife resided at 386 Stuyvesant Avenue, Irvington, NJ and an electric bill for the month of October 2001, which shows that the petitioner resided at 5 Shetland Ct., Bldg. 25-A9, Edison, NJ with electric service to the Stuyvesant Avenue address.
- Copies of health insurance cards for the petitioner's wife.
- A two-paragraph statement written by a friend of the petitioner.
- Evidence that the petitioner obtained health insurance coverage for his wife.

In review, it is noted that the petitioner submitted only a partial copy of a lease and that the petitioner alone is

listed as the tenant on the lease. Although the director specifically directed the petitioner to include the full name, address, date and place of birth of affiants on affidavits, the friend's affidavit merely lists the affiant's name. The bank statements were dated September 5, 2002 and August 5, 2002. They showed bank balances of \$4.09 and \$34.06. On the Form I-360, the petitioner indicated that he lived with his wife from June 1997 until August 15, 2002. The petitioner provided scant documentation indicating that he resided with his wife. He failed to submit evidence showing joint ownership of property such as mortgage agreements or payments, property titles or property registrations. He failed to submit a lease signed by the petitioner and his spouse. He provided no evidence that he and his wife had jointly filed income tax returns. No children were born of the marriage. The affidavits and statements submitted are vague. Accordingly, the petitioner has submitted insufficient evidence to establish that he entered into the marriage in good faith.

Because the petitioner furnished insufficient evidence to establish that he has been abused or the subject of extreme cruelty perpetrated by his spouse, the director requested additional evidence. The director indicated the type of evidence that the petitioner could submit to establish that he had been abused or subjected to extreme cruelty.

The evidence relating to abuse and extreme cruelty is as follows:

- A termination summary from a licensed social worker that states that the petitioner sought treatment due to "a high level of tension he was experiencing in his marriage."
- The notes of a licensed social worker based on counseling the petitioner received on August 7, 2002 through September 17, 2002.
- The petitioner's rebuttal submitted on appeal in which he states his wife "used [his] legal status to torture [him] mentally, financially and sexually."
- The petitioner's initial statement that, "[t]he number one problem in our [marital] relationship was that she was not responsible. All she ever wanted to do was shop and when I could not afford to give her money, she will threatened [sic] to see other men." He further stated, "[s]he does not want to work. She will not cook or clean. Our sex life was next to nothing. With her change [sic] behavior, and treatments that I think no man should be subjected to, I got depress [sic] and anxious."

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen wife. The evidence on the record does not suggest that the marital difficulties claimed by the petitioner rose to the level of abuse or extreme cruelty. 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.