

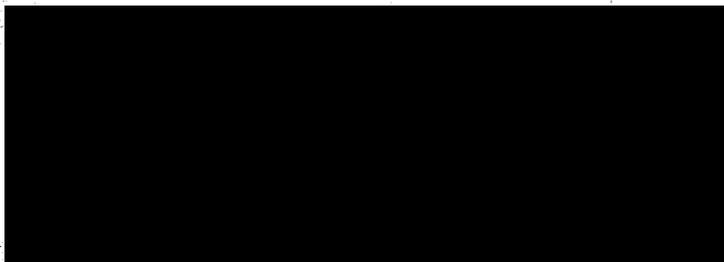
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
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U.S. Citizenship
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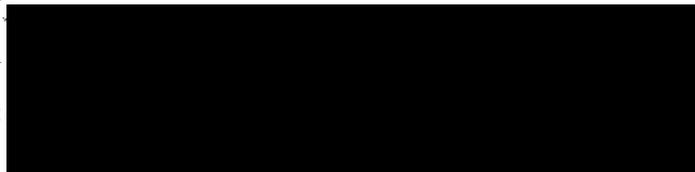
Office: VERMONT SERVICE CENTER

Date: DEC 27 2004

IN RE:

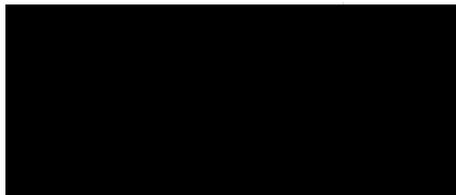
Petitioner:

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:



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

for 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 27-year old native and citizen of Colombia 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.

On appeal, counsel for the petitioner asserts that the petitioner was “a victim of psychological cruelty.”

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 last entered the United States as a nonimmigrant visitor on January 30, 1993. The petitioner's stepfather filed a Form I-130 on the petitioner's behalf. The district director denied the Form I-130 because the petitioner was over 18 years of age when his mother remarried. The petitioner wed Alice Aponte, now 36 years of age, on December 2, 1997 in Spring Valley, New York. The petitioner's wife filed a Form I-130 petition on the petitioner's behalf. Action on the Form I-130 petition was automatically terminated due to abandonment. On January 24, 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 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 had been battered or subjected to extreme cruelty by his citizen spouse, he was requested on November 6, 2003 to submit additional evidence (RFE). The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. The petitioner requested an additional 60 days in which to respond to the RFE. The director granted the petitioner an extension of time in which to respond.

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, counsel for 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. Counsel also asserts that the petitioner's wife's "interest and growing involvement in the Santeria religion tested not only the marital bond between [the petitioner and his wife], but also forced petitioner to endure an emotional loss over a two year period where he was expected to conform to her spiritual deviance or be constructively abandoned."

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 affidavit.
- An affidavit of [REDACTED] a close friend of the petitioner.
- A letter from [REDACTED] Minister of the International Center of Integral Theotherapy.
- An affidavit of [REDACTED] friend of the petitioner.
- Articles on Santeria from the Internet.
- Counsel for the petitioner's description of the abuse.

According to the petitioner's statement, he and his wife were happily married from December 1997 until the winter or spring of 2001. He said that in 2001, his wife became heavily involved with Santeria and began holding religious rites in their home. He said that his wife tried to convert him to Santeria. He further stated that his wife quit performing her household chores and paying her share of the household bills. The petitioner stated that he "became depressed and started to drink" as he became disillusioned with his marriage. He further stated that he sought counseling from his minister [REDACTED]. The petitioner stated that in May of 2001, his wife threw him out of their home and gave away his possessions.

[REDACTED] a friend of the petitioner wrote that he personally saw the petitioner's wife's "strange behavior," and that he knows it caused "lots of stress in the matrimony." [REDACTED] wrote that the petitioner became very depressed about his marriage relationship.

The petitioner's minister [REDACTED] wrote that the petitioner came to him "in a state of depression seeking for counseling to treat issues in his life, one of them being his marriage situation."

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 expressed distress that his wife tried to convert him and became absorbed in her new religion. She eventually ended the relationship. This is an issue of compatibility rather than one of abuse. 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 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.