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U.S. Citizenship
and Immigration
Services

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DEC 29 2004

FILE:



OFFICE: VERMONT SERVICE CENTER

Date:

EAC 02 256 52755

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 Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 29-year old native and citizen of Venezuela 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 determined that the petitioner failed to establish that she had been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and that she had entered into the marriage in good faith. The director, therefore, denied the petition.

On appeal, counsel states that the petitioner's marriage with her spouse was entered into in good faith and not for the purpose of procuring her admission as an immigrant. Counsel asserts that the treatment the petitioner received from her U.S. citizen spouse is equivalent to extreme cruelty. Counsel submitted a brief on appeal and indicated that he would submit additional evidence within forty-five days of filing the appeal. More than eight months have lapsed since the appeal was filed and nothing more has been submitted for the record.

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 her spouse, may self-petition for classification of the alien 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.

The record reflects that the petitioner last entered the United States on January 3, 1994 as a B-2 nonimmigrant visitor. The petitioner married her United States citizen spouse on July 14, 1995 in Brooklyn, New York. The petitioner is presently 29-years old and her date of birth is March 10, 1975. The petitioner's spouse is presently 44-years of age, and he was born on August 22, 1960. On August 6, 2002, the petitioner filed a 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)(B) provides that the self-petitioning spouse of a U.S. citizen must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on that relationship.

The record reflects that the petitioner married her husband in the United States on July 14, 1995. The petitioner's husband filed a relative petition on the beneficiary's behalf on July 21, 1995. The petitioner and her spouse were interviewed for adjustment of status on July 8, 1996. On August 10, 1996, the petitioner and her spouse appeared for an interview conducted in accordance with procedures enumerated in *Stokes v. INS*, No. 74 Civ. 1022 (S.D.N.Y. Nov. 10, 1976)(*Stokes* interview). On or about May 20, 1997, the district director denied the relative petition, finding that numerous discrepancies arose between the petitioner and her husband's separate testimonies during the *Stokes* interview.

The petitioner was placed in deportation proceedings on October 15, 1997.

On September 5, 1997, the petitioner's spouse filed another I-130 relative petition. On April 27, 2000, the petitioner and beneficiary appeared for a second *Stokes* interview. The district director issued a notice of intent to deny the visa petition to the petitioner's husband on May 3, 2000. The district director approved the second I-130 petition on August 17, 2000.

The record reflects that the immigration court did not rule on the petitioner's application to adjust status based on the approved Form I-130. The petitioner's attorney requested an adjournment of proceedings in the immigration court in order to file the Form I-360 petition for a special immigrant visa. The Form I-360 petition was filed on August 6, 2002. On June 10, 2003, the director denied the Form I-360 petition. The record reflects that the immigration court granted the petitioner voluntary departure on September 30, 2003. The petitioner filed an appeal of that decision with the Board of Immigration Appeals, which is currently pending.

The director reviewed and discussed the evidence furnished by the petitioner to establish eligibility for the benefit sought, including documents contained in the petitioner's record of proceeding. The discussion will not be repeated here. The director determined that the evidence of record, specifically: the absence of evidence of physical abuse, the description of the petitioner's spouse's behavior, the petitioner's spouse's medical and criminal records, the absence of evidence showing that the petitioner and her spouse shared their financial resources, and the record of the petitioner and her husband's adjustment interview in which numerous discrepancies between their separate testimonies, indicate that the petitioner entered into the marriage merely to obtain immigration benefits and that she was neither battered or subjected to extreme cruelty by her spouse.

On appeal, counsel asserts that the petitioner's statements that her husband was not physically violent toward her should not be held against her. Counsel further asserts that the petitioner suffered mental abuse that rose to the level of extreme cruelty. Counsel states that the petitioner's husband's socially inappropriate behavior, multiple arrests, and substance abuse constitute mental abuse. Counsel argues that the director gave insufficient weight to a social worker's assessment of the petitioner.

Counsel submitted the following evidence :

- The birth certificate for [REDACTED] showing he was born in the United States.
- A copy of the marriage certificate for the petitioner and [REDACTED]
- An affidavit from the petitioner's mother [REDACTED], stating that she had lived in the same household with [REDACTED] and the petitioner for a period of five years.
- Additional letters provided by four friends and submitted to the district director for an interview on April 26, 2000.
- The petitioner's sworn statement as to the bona fides of her marriage relationship with [REDACTED]
- A letter written by a social worker who counseled the petitioner indicating that the petitioner had reported that her husband had been financially, emotionally and psychologically abusive to her over the course of her eight-year relationship with him.
- Information about schizophrenia.
- A notice of the New York City criminal justice system to the petitioner's spouse ordering him to appear in court on April 15, 2003.
- Copies of correspondence addressed to [REDACTED] Heights, New York.
- A letter from the New York City Police Department's Domestic Violence Prevention Program addressed to the petitioner's spouse to inform him of resources available to help individuals and families who are experiencing family violence.
- An incomplete domestic incident report.
- A letter from the New York City Department of Corrections indicating that the petitioner's spouse had been incarcerated for sixty days in the spring of 1998.
- Evidence that the petitioner's husband had been hospitalized at a chemical dependency detox unit in New York City in August 1998 and again in February 2000.
- Evidence that the petitioner has been employed.
- Certification that the petitioner's spouse was diagnosed with chronic paranoid schizophrenia with acute exacerbation.
- Evidence that the petitioner's spouse was under the care of a physician at the Presbyterian Hospital in New York City from April 1995 through August 1997 while he was residing in the Ft. Washington [REDACTED] and that he had been hospitalized on twelve occasions while under that physician's care.
- The petitioner and her husband's statement regarding their bona fide marriage dated April 26, 2000.

- Evidence that the petitioner's federal income tax filing status was "married filing separate" in 1997.
- A bank statement for October 1999.

In review, the evidence is insufficient to overcome the director's objections to approving the petition. The evidence regarding the bona fides of the marriage is insufficient. The affidavits indicate that the petitioner and her spouse lived together. A letter from a physician that treated the beneficiary's spouse indicates that the beneficiary's spouse lived in a shelter from April 1995 through August 1997. In the district director's letter denying the initial I-130 petition, he noted that discrepancies arose between the petitioner and her spouse's testimonies regarding their home phone number, and whether they had phone contact while the petitioner was out of town, among other things.

The petitioner failed to establish that she had been battered or subjected to extreme cruelty by her United States citizen spouse. The evidence on the record indicates that the petitioner's spouse has had encounters with the authorities and has been hospitalized frequently for substance abuse and psychiatric reasons. The evidence contains a letter written by a social worker that counseled the petitioner. The social worker wrote that:

[The petitioner] reported that her spouse [REDACTED] over their eight-year relationship and seven-year marriage, had been financially, emotionally and psychologically abusive to her. [REDACTED] has been diagnosed with Chronic Schizophrenia and is a chronic drug abuser. He often demanded money from [the petitioner] and threatened her when she refused to give in to his demands. . . . Over the course of their marriage [REDACTED] attended numerous detoxification programs. He made [the beneficiary] feel responsible for his recovery. On June 6, 1998 [REDACTED] called the police and stated that if they did not come to the home, he would hit her. Finally in March 2002 [REDACTED] moved out of the marital home after refused [sic] to allow [the petitioner] to go out of the home and stated that if she did, he would leave her.

[The petitioner] has [had] individual counseling sessions since July 2002. Through this interaction with her, it is my professional opinion that [her] demeanor is consistent with that of an abused woman. . . . It is therefore my opinion that [REDACTED] been financially, emotionally and psychologically abusive to [the petitioner.] I also believe her marriage was bona fide.

In review, the social worker failed to explain the basis for her opinion that the petitioner's marriage was bona fide. Her opinion that the petitioner had been abused by her husband is insufficient evidence that the petitioner suffered extreme cruelty at the hands of her husband for purposes of establishing eligibility under section 204(a)(1)(A)(iii) of the Act.

In a statement, the petitioner indicated that her spouse had never been physically violent with her, but that he had been insulting and verbally abusive, saying hurtful things such as calling her "a little stupid girl." She stated that her husband's refusal to take his medication, his substance abuse and his disappearance for days was abuse.

While the AAO does not wish to diminish any emotional distress the petitioner suffered, it does not find that her husband's treatment is equivalent to extreme cruelty as required by the statute and regulations.

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.