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U.S. Citizenship
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DEC 29 2004

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
EAC 02 106 50172

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:

[REDACTED]

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.

Robert P. Wiemann

& 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 native and citizen of Peru 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 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 is a person of good moral character.

On appeal, counsel for the petitioner submits a brief and 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.

According to the evidence on the record, the petitioner last entered the United States on March 23, 1993 and wed Juan Vilela, then a permanent resident, on December 28, 1997 in Concord, California. The petitioner's husband filed a Form I-130 petition on her behalf on January 22, 1998. The petitioner's spouse became a naturalized citizen on November 5, 1998. The petitioner's spouse subsequently withdrew the Form I-130 petition on March 18, 2002 and initiated divorce proceedings. The parties divorced on August 22, 2001. On February 4, 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 spouse during their marriage.

The director determined that the petitioner failed to establish that she had been abused or the subject of extreme cruelty by her resident/citizen spouse during the marriage. According to the evidence on the record, the petitioner's spouse forced the petitioner to have sex against her will, sodomized her and threatened to report her to the Immigration Service (now Citizenship and Immigration Services) or divorce her if she refused to comply with his wishes. The evidence on the record includes the petitioner's detailed descriptions of the abuse she endured

and a psychological evaluation of the petitioner. The evidence is sufficient to establish that the petitioner was abused or the subject of extreme mental cruelty by her spouse.

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, and is a person of good moral character.

Because the petitioner furnished insufficient evidence to establish that she had resided with her citizen/permanent resident spouse, was abused or the subject of extreme cruelty by her citizen/permanent resident spouse and is a person of good moral character, the director requested the petitioner to submit additional evidence.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here. The director determined that the petitioner had failed to meet her burden of proof of establishing eligibility for a preference visa.

The petitioner failed to establish that she resided in the United States with her citizen/resident spouse. The evidence consists of the following:

- The petitioner's statements.
- Copies of joint bank account statements covering the years 1997 through 1999 addressed to the petitioner and her spouse at their residence at [REDACTED] Concord, California.
- Copies of joint bank account statements covering the years 1999 and 2000 addressed to the petitioner and her spouse at [REDACTED] [REDACTED]
- Copy of 1999 joint federal income tax return transcript listing the petitioner and her husband's address as [REDACTED] California.
- Copy of 2000 joint federal income tax return transcript listing the petitioner and her husband's address as [REDACTED] Concord, California.
- Copies of envelopes addressed to the petitioner and her spouse at [REDACTED] Concord, California.
- Copies of prescription labels and utility and phone bills addressed to the petitioner at [REDACTED] Concord, California.

- The petitioner's husband's divorce petition indicating that he and the petitioner resided together for one day.
- A letter from the Internal Revenue Service (IRS) indicating that the petitioner and her spouse had lived at 2250 Monument Road, Apt. D, in Concord, California.

While the director noted several discrepancies in the evidence regarding the petitioner's residence, the petitioner asserts that she had two addresses because she worked as a live-in nanny during the workweek and spent weekends with her husband. The petitioner's assertion does not explain the discrepancies in the addresses between the IRS letter and the bank statements. The petitioner submitted a joint federal income tax return transcript listing the petitioner and her husband's address as [REDACTED] Concord, California in 2000 and an IRS letter indicating that their address was [REDACTED] Concord, California in 2000. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence is insufficient to establish that the petitioner and her spouse resided together during their marriage.

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. The director further indicated that the Concord Police clearance submitted by the petitioner was insufficient because the clearance was done by a name only search and failed to include a search with all aliases she had used, including her maiden name. On appeal, the petitioner submitted police clearances from the [REDACTED] Departments and the [REDACTED] Sheriff's Department. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. The evidence is insufficient to establish that the petitioner is a person of good moral character.

Beyond the decision of the director, the petitioner failed to establish that her divorce was connected to domestic violence. The petitioner's marriage to the citizen spouse was terminated prior to the filing of the instant petition. On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(c) amends section 204(a)(1)(B)(ii) of the Act to read as follows:

(I)(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.

(II) For purposes of subclause (I), an alien described in this paragraph is an alien...

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and...

(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse.

Divorce prior to the filing of the petition is no longer a bar as long as there is a connection between the legal termination of the petitioner's marriage within the past two years and domestic violence. In this case, the petitioner's spouse initiated divorce proceedings. The petitioner failed to establish a connection between domestic violence and the termination of her marriage.

Further, the petitioner failed to establish that she was lawfully married to her citizen spouse. According to the evidence on the record, the petitioner's spouse had been married twice before marrying the petitioner. The petitioner failed to submit evidence that her spouse had divorced Victoria Pulgar prior to his marriage to the petitioner. For these additional reasons, 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 met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.