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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B9



FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 02 2006

EAC 04 195 50606

IN RE:

Petitioner:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Trinidad who seeks 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 an alien subjected to battery or extreme cruelty by his United States citizen spouse. The director denied the petition because the record did not establish that the petitioner had resided with his U.S. citizen spouse or that his spouse subjected him to battery or extreme cruelty. On appeal, the petitioner submits support letters from a pastor and a friend. The evidence submitted on appeal does not establish the petitioner's eligibility and the appeal will be dismissed for the reasons discussed below.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

*(vi) 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, including rape, molestation, incest (if the victim is a minor), or forced prostitution 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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental

records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *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 abuse 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.

#### *Joint Residence*

On his Form I-360, the petitioner states that he lived with his U.S. citizen wife, [REDACTED] from April 20, 2002 to October 9, 2003 and that their last joint residential address was [REDACTED] New York [REDACTED]. The couple's marriage certificate indicates that the petitioner and his wife were both residing at this address on April 20, 2002, the date of their marriage. The submitted copy of a police report made by the petitioner on December 8, 2003 also lists this address as the couple's residence. The submitted copy of a bank statement dated December 31, 2004 is jointly addressed to the petitioner and Ms. [REDACTED] at the [REDACTED] address. The petitioner submitted a life insurance application dated December 16, 2002, which lists this address as his residence and lists Ms. [REDACTED] as his primary beneficiary. The record also contains a copy of a telephone bill dated January 28, 2005 that is jointly addressed to the petitioner and Ms. [REDACTED] address.

These documents do not establish that the petitioner actually resided with his wife. In the police report, the petitioner states that on October 9, 2003, his wife left their home after an argument and never returned. The bank statement and telephone bill are dated over one year after this incident and consequently do not show that the petitioner and his wife were living together at the time the documents were issued. The police report is based on the petitioner's own statements and does not provide corroborative evidence of the couple's joint residence. The life insurance application lists the petitioner's wife as his beneficiary, but does not state her address. The couple's marriage certificate alone is insufficient to demonstrate their joint residence.

In their letters submitted on appeal, the petitioner's pastor and friend do not state that they ever visited the petitioner and his wife in their home or have other personal knowledge of their joint residence. The record thus does not demonstrate that the petitioner resided with his wife as required by section 204(a)(1)(A)(iii)(II) of the Act.

#### *Battery or Extreme Cruelty*

The police report states that the petitioner's wife left their home after the couple had an argument on October 9, 2003 and that she never returned. The report does not indicate that the petitioner was battered or subjected to extreme cruelty by his wife. On appeal, the petitioner submits a letter from Rev. [REDACTED] who states that the petitioner received counseling through his colleague, another pastor named [REDACTED] for the mental stress and depression that he suffered as a result of his wife's departure. The letter does not state that the petitioner

was battered by his wife or describe any mistreatment of the petitioner by his wife that rises to the level of extreme cruelty as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Rev. [REDACTED] also does not state that he has any personal knowledge of Ms. [REDACTED] mistreatment of the petitioner. Rev. [REDACTED] further indicates that he has not personally witnessed the petitioner's resultant mental stress and depression because he states that Pastor [REDACTED] not [REDACTED] himself, counseled the petitioner. Accordingly, the record does not demonstrate that the petitioner was battered or subjected to extreme cruelty by his U.S. citizen wife during their marriage as required by section 204(a)(1)(A)(iii) of the Act.

The record does not establish that the petitioner resided with his U.S. citizen wife or that his wife battered or subjected him to extreme cruelty during their marriage. He is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and his petition must be denied.

The burden of proof in visa petition 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.