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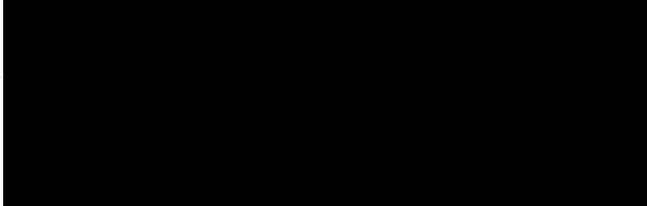
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 02 2006
EAC 03 263 50634

IN RE: Petitioner: [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:



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 Jamaica 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 her United States citizen spouse. The director denied the petition, finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her United States citizen spouse during their marriage. On appeal, counsel maintains that the petitioner was abused by her husband and submits five additional affidavits. 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 to 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.

* * *

(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.

In this case, the record indicates that the petitioner married United States citizen [REDACTED] on October 12, 2001 in New Jersey. As evidence of abuse, the petitioner initially submitted only her own written statement in which she explains that her husband called her derogatory names, lied to her, used drugs, abruptly moved to another state, and had an extramarital affair. The petitioner explains that one day she went to the doctor who said that her stress level was abnormal and that her blood pressure was too low. However, the petitioner did not submit medical records from this doctor's visit or any other documents to corroborate her claim. Finding the petitioner's unsupported statements insufficient to establish the requisite battery or extreme cruelty, the director issued a Request for Evidence (RFE) on August 10, 2004 and asked the petitioner to submit documentation that she was battered or subjected to extreme cruelty by her husband during their marriage. The RFE listed the specific types of documents that the petitioner could submit to establish battery or extreme cruelty.

On November 10, 2004, the petitioner submitted a second written statement and letters from three friends. In her second statement, the petitioner explains that her husband cursed her and that afterwards, she would often wonder if she was stupid and if something was wrong with her. The petitioner describes in detail one incident in December 2001 when her husband refused to give her money to pay for their groceries, cursed her, lied to her about not having any money, and later forced her to have sex. [REDACTED] the petitioner's friend, states that the petitioner would often call her and tell her about her husband's mistreatment and that Ms. [REDACTED] once brought the petitioner to her house to stay for a few days because "the mental abuse was getting worse." Ms. [REDACTED] further states that the petitioner went to the emergency room on two occasions because of nervousness, stress, high blood pressure, headaches and weight loss. [REDACTED] the petitioner's friend and former roommate, states that the petitioner called her on several occasions when she was crying and told her about her husband's abusive behavior. Ms. [REDACTED] also states that the petitioner went to the hospital because of depression and stress and that she lost a lot of weight. [REDACTED] another friend of the petitioner's, simply states that the petitioner and her husband were separated due to "the mental/emotional abuse." The petitioner herself does not state that she ever went to the emergency room and does not describe experiencing many of the physical or psychological problems reported by Ms. [REDACTED] and Ms. [REDACTED].

On appeal, the petitioner submits letters from five other personal acquaintances. [REDACTED] states that the petitioner became very depressed a few months after her marriage due to problems with her husband. [REDACTED] describes one social occasion in 2003 when the petitioner's husband shouted at and cursed the petitioner because she was dancing with another man. When Mr. [REDACTED] and others tried to intervene, he states that Mr. [REDACTED] did not listen to them and left the petitioner on her own. [REDACTED] states that in January 2003 at [REDACTED] birthday party, Mr. [REDACTED] got angry with the petitioner for dancing with a friend, told her it was time to go home, told her to shut up when she said she did not want to leave and then pulled her through the door although she was crying. [REDACTED] states that on August 6, 2003, she was at a birthday party with the petitioner and her husband. Ms. [REDACTED] observed Mr. [REDACTED] flirting with some other women and noticed that the petitioner was in a melancholy mood. Ms. [REDACTED] further states that she later heard Mr. [REDACTED]

arguing with the petitioner and telling her she was unattractive. These statements are uncorroborated by any other evidence in the record. The petitioner herself has not described these incidents in her own statements. While these letters indicate that Mr. [REDACTED] mistreated the petitioner, but they do not describe behavior which rises to the level of battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

[REDACTED] states that on August 2002, the petitioner helped her prepare for and then attended a party at Ms. [REDACTED] home. She explains that Mr. [REDACTED] did not arrive at the party until late in the evening and soon told the petitioner that he wanted to leave. Ms. [REDACTED] states that she saw Mr. [REDACTED] pull the petitioner by her blouse and push her. Ms. [REDACTED] reports that she then drove the couple home and that Mr. [REDACTED] began arguing with the petitioner during the drive. Ms. [REDACTED] states, "I would *almost* swear that he hit her in her stomach because she became very quiet and when I did drop them off, she was holding her stomach as she walked away from the car." The petitioner did not describe this incident in either of her statements and Ms. [REDACTED] account of the evening is uncorroborated by any other evidence in the record.

The petitioner's statements and the letters of her friends indicate that Mr. [REDACTED] mistreated the petitioner and that they had significant marital problems. The petitioner submitted no other documentation to support her claim that she was battered or subjected to extreme cruelty by Mr. [REDACTED]. Although she and some of her friends state that she received medical attention for physical and psychological problems arising from her husband's mistreatment, the record contains no medical records to verify these statements. In addition, the petitioner submitted no evidence that she ever called the police, sought an order or protection or took other legal steps to end her husband's abuse. In her second statement, the petitioner explains that she has now turned her "life to God and is now living a Christian life," but she submits no affidavits from clergy or other church members from whom she has sought help.

The petitioner did not discuss many of the incidents described in her friends' letters and the petitioner's account of her medical treatment differs significantly from that of Ms. [REDACTED] and Ms. [REDACTED]. These inconsistencies and the fact that the petitioner's statements and those of her friends are unsupported by any other corroborative documentation in the record prevent a finding that the petitioner was subjected to battery or extreme cruelty by Mr. [REDACTED] during their marriage. The petitioner 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 her self-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. This decision is rendered without prejudice to the filing of a new petition under section 204(a)(1)(A)(iii) of the Act with the requisite supporting documents and filing fee or a documented request for a fee waiver.

ORDER: The appeal is dismissed.