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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: [redacted] Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

FEB 11 2004

APPLICATION: 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

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez for
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 on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic 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: (1) has resided with the citizen or lawful permanent resident spouse; and (2) 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 director, therefore, denied the petition.

On appeal, the petitioner asserts that substantial abuse from the marital relation with Mario Vasquez had been submitted timely, and she urges examination under the battered spouse provisions. She claims that she had been mentally abused by her husband during the "period between 1997 and the summer of 2001." The petitioner further asserts that affidavits by witnesses were provided to the Service Center, and "to this date a fair assessment is due."

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

> (i) 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;
>
> (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and
>
> (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner entered the United States as a visitor on August 22, 1993. The petitioner married her United States citizen spouse on October 18, 1996, at Bronx, New York. On May 10, 2002, a self-petition was filed by the petitioner 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.

PART I

8 C.F.R. § 204.2(c)(1)(i)(D) requires the petitioner to establish that she has resided in the United States with her U.S. citizen spouse.

Because the petitioner furnished no evidence addressing a shared residence with her citizen spouse, the director requested, on November 7, 2002, that she submit additional evidence. The director listed examples of the evidence the petitioner may submit to show joint residence. The petitioner, in response, did not include evidence to establish that she had resided with her spouse in the United States.

While the petitioner, on appeal, listed an address where she and the petitioner lived together for eight months in 1998, no

evidence was furnished to establish this assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has failed to overcome this finding of the director pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D). Therefore, the petition must be denied for this reason.

PART II

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) provides:

> [T]he 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. § 204.2(c)(2) provides, in part:

> (i) 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.
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> * * *
>
> (iv) 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 abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director reviewed the evidence furnished by the petitioner and determined that the petitioner had provided insufficient evidence to establish that she had met this requirement. The petitioner, therefore, was requested on November 7, 2002, to submit additional evidence. The director listed examples of evidence she may submit to establish extreme cruelty. The director noted that in response, the petitioner submitted a report from Irene Torres, C.S.W. However, the petitioner had submitted three reports from Ms. [redacted] and the only mention of abuse had been in her initial assessment in which she mentioned that the petitioner claimed her husband had been verbally abusive to the petitioner in public. The director, therefore, determined that the evidence of record did not support the petitioner's claim that she had been battered by, or had been the subject of extreme cruelty committed by, her husband.

On appeal, the petitioner resubmits copies of the three reports from [redacted] and a letter from New York Presbyterian

Hospital indicating that the petitioner was treated for an emotional disorder from December 28, 1999 to January 7, 2000. The reports from Ms. were addressed by the director and determined to be insufficient to establish extreme cruelty. The director also noted that the petitioner was hospitalized for major depression; however, it did not establish or infer that her depression was the result of having been the subject of battery or extreme mental cruelty committed by her husband. No evidence was furnished, on appeal, to address this finding of the director.

The petitioner states that affidavits by witnesses were provided to the Service Center; however, no assessment has been made on these affidavits. The record of proceeding contains statements from four individuals that were not addressed by the director:

- states that he met the petitioner "around 1999 in the place she worked" and they got to know each other to the point that they shared information about their private and intimate life. Mr. knowledge of the alleged abuse, however, was based primarily on what the petitioner told him; thus, the statement was essentially an extension of the petitioner's personal testimony rather than independent corroboration of that testimony.

- The statement from is based on a character reference and a testimony that the petitioner and her spouse were happily married, and that their marriage was genuine. No mention was made by Ms. however, that the petitioner was abused during this marriage.

- states that the petitioner's marriage was based on love and mutual genuine attraction. However, soon after the marriage, the two miscarriages and the emotional instability of her husband changed everything for the worse. Mr. further states that he believes that this situation placed the petitioner in the hospital in order to deal with her mental issues.

- claiming to be the petitioner's sister-in-law, states that she is a witness to the relationship between the petitioner and She states that: the petitioner had two miscarriages, soon everything changed between the couple, and, she noted that they started growing apart. She further states that she witnessed how the petitioner was upset and hurt when started abusing her verbally.

While Mr. [redacted] and Ms. [redacted] state that the petitioner had two miscarriages, no dates were given as to when the miscarriages occurred, nor is there evidence that the miscarriages relate to the incidents of the claimed abuse. On appeal, the petitioner only states: "My husband complained about everything. My sexual drive, my cooking; my house chores, etc. He was never satisfied with my loving and tenderness. I was ejected many times from my home."

The evidence provided in the present case does not suggest that the marital difficulties claimed by the petitioner and the affiants were beyond those encountered in many troubled marriages. Further, the relationship described by the affiants and the petitioner reflects what would be considered a troubled marital relationship but does not constitute qualifying abuse.

Furthermore, the Form I-360 shows that the petitioner claimed to have resided with her spouse from October 1996 until October 1998. The medical report reflects that the petitioner was treated at a hospital for depression on December 29, 1999, more than one year after the claimed separation of the petitioner and her spouse.

As provided in 8 C.F.R. § 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." None of the affiants, in this case, found that the claimed abuse perpetrated toward the petitioner by her spouse was "extreme." The petitioner has failed to establish that she was battered by, or was the subject of "extreme cruelty" as contemplated by Congress, and to overcome the director's findings pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E). Therefore, the petition must also be denied for this reason.

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.