



U.S. Citizenship
and Immigration
Services

B-9



FILE:

[REDACTED]
EAC 02 155 52410

Office: VERMONT SERVICE CENTER

Date: JUL 14 2004

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:

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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 63-year old male native and citizen of Ecuador 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 acting director denied the petition, finding that the petitioner failed to establish that he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse.

On appeal, the petitioner submits a statement.

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 divorced his first wife, [REDACTED] on March 23, 1995 in the United States. He wed his second wife, [REDACTED] a naturalized citizen, on June 16, 1995 in Queens, New York. It is noted that the petitioner's second wife is eighteen years older than the petitioner. The petitioner's second wife filed a Form I-130 petition on behalf of the petitioner, and the district director denied the petition, finding the evidence insufficient to establish the bona fides of the marriage. On April 5, 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, his U.S. citizen spouse during their marriage..

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he 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).

Because the petitioner furnished insufficient evidence to establish that he has been battered by or subjected to extreme cruelty by his citizen spouse, he was requested on September 19, 2002, to submit additional evidence. The acting director listed evidence the petitioner could submit to establish battery or extreme mental cruelty by his spouse.

The acting director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here.

On appeal, the petitioner states the following:

I executed my affidavit as of January 29, 2003, stating under penalties of perjury actually my hardship with my sick spouse Agueda, a senile woman taking medication and requiring my personal care after work until the dawn hours of the night.

I always pleased her in her demands for my personal services, beginning with giving her meals. When she wants a hard liquor I must provide her with the drinks from my hand to her mouth. After having a few drinks then she becomes a sex machine. I sometimes return home very tired and I had to oblige to her sexual demands until a point when my body aches. I do not believe that a man for love should become a sexual object and most indignant is to have to do such sexual acts required by a sick and senile person. I get no satisfaction or gratification when I am forced to be intimate with Agueda. I am not a sex machine. I have feelings as well. I don't enjoy her continuous and almost daily demands after taking her medication. I became a non-person and only her erectile penis. I believe the INS authorities are to review and be just fair. I will continue to provide and care for her but I shall not be treated as a sex object.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse. The evidence consists of the following:

- A psychological assessment of the petitioner.
- Affidavits of the petitioner.

According to the evidence on the record, the petitioner's wife suffered a stroke shortly after she wed the petitioner, becoming aggressive and ill tempered. The assessment's author diagnosed the petitioner with an adjustment disorder with depressed mood. The petitioner complains that his wife has reduced him to a sex machine. Although the petitioner's marital situation may be far from ideal, the evidence is insufficient to establish that the abuse he suffered rose to the level of battery or extreme cruelty. The petitioner's statement is insufficiently specific as to the exact abuse he endured.

Beyond the decision of the acting director, the petitioner failed to establish that he entered into his marriage to his citizen spouse in good faith. According to the evidence on the record, the petitioner's wife's Form I-130 petition filed on behalf of the petitioner was denied because they failed to establish the bona fides of the marriage relationship. For this additional reason, the petition may not be approved.


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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.