



U.S. Citizenship  
and Immigration  
Services

B-9



FILE:

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Office: VERMONT SERVICE CENTER

Date: JUL 14 2004

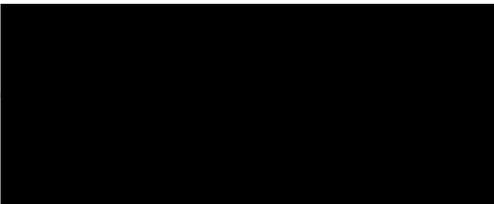
IN RE:

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:



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 Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 32-year old 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 determined that the petitioner failed to establish that he is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The director denied the petition, finding that the petitioner failed to establish that he had been battered by or subjected to extreme cruelty during his marriage to his citizen spouse during their marriage.

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 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 in the United States 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.

According to Citizenship and Immigration Services (CIS) records, the petitioner last entered the United States as a B-2 nonimmigrant visitor on March 26, 2002.

According to the evidence on the record, the petitioner initially wed U.S. citizen [REDACTED] at Boise, Idaho on July 14, 1999 and divorced on May 16, 2000 in Nevada. [REDACTED] filed a Form I-130 petition on the petitioner's behalf on August 13, 1999. The petition was denied on April 2, 2001 because the petitioner and his wife [REDACTED] failed to appear for an interview. According to the evidence on the record, the petitioner wed U.S. citizen [REDACTED] in Tampa Bay, Florida on May 20, 2002. [REDACTED] filed a Form I-130 on the petitioner's behalf on June 5, 2002. On September 21, 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, his U.S. citizen spouse during their marriage.

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.

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).

The petitioner initially submitted the following evidence to establish that he had been subjected to extreme cruelty by his citizen wife during their marriage:

- The petitioner's statement dated September 10, 2002.
- An affidavit of the petitioner's friend [REDACTED] dated September 10, 2002.
- An affidavit of the petitioner's friend [REDACTED] dated September 10, 2002.
- A letter written by two representatives of Catholic Charities Counseling Services indicating that the petitioner had received four sessions of individual therapy to work on his significant distress due to this separation from his wife.

Because the petitioner furnished insufficient evidence to establish that he has met this requirement, he was requested on April 23, 2003, to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. In response to the request for additional evidence, counsel for the petitioner submitted the following:

- A supplemental statement of the petitioner dated May 29, 2003.
- A letter from Catholic Charities dated May 14, 2003 indicating that the petitioner received five individual therapy sessions.
- Copies of previously submitted affidavits of [REDACTED]

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. Because the record did not contain satisfactory evidence to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen spouse during the marriage, the director denied the petition.

On appeal, the petitioner resubmits previously provided documentation and another affidavit of the petitioner. In his affidavit, the petitioner asserts that he suffered extreme mental cruelty at the hands of his citizen wife.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen wife. According to the evidence submitted, the petitioner's wife made racist remarks in the petitioner's presence, called him "a faggot" and "worthless." According to the evidence, the petitioner's wife threatened to abort their child and to have the petitioner deported. The petitioner further stated that his wife used his credit card to purchase an airline ticket. The medical evidence in the form of two letters indicates that the petitioner received short-term counseling shortly after he and his second wife separated.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, or court officials. The petitioner failed to submit evidence that he sustained serious emotional harm as the result of his wife's treatment. He did not submit evidence that he sought refuge in a shelter or elsewhere. He did not obtain an order of protection against his wife or take other legal steps to end the alleged abuse. He did not allege he sustained any physical injuries. The evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse.

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.