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U.S. Citizenship
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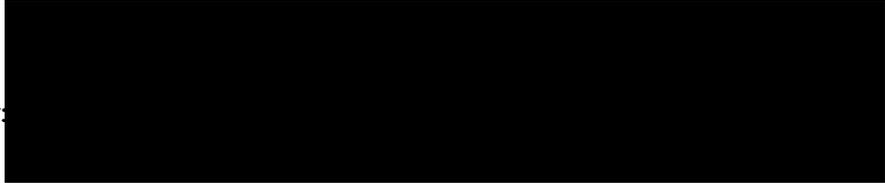


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Office: VERMONT SERVICE CENTER

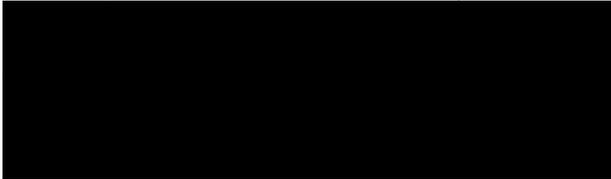
Date: **JUL 20 2004**

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
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 Honduras 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 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 she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse; is a person of good moral character; and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a brief and additional evidence.

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 . . . 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.

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

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

According to the evidence on the record, the petitioner has wed twice. She married [REDACTED] on March 6, 1978 and their marriage ended in dissolution on June 12, 1995 in Stuart, Florida. One child was born of the marriage. The petitioner subsequently wed United States citizen [REDACTED] on July 1, 1996 in Stuart, Florida. On April 25, 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.

The regulation at 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 spouse 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 regulation at 8 C.F.R. § 204.2(c)(i) requires the petitioner to show that she has resided with her citizen spouse, is a person of good moral character, and entered into the marriage in good faith.

Because the petitioner furnished insufficient evidence to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during the marriage, she was requested on October 11, 2002, to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty.

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.

On appeal, counsel for the petitioner asserts that the director erred in finding the evidence insufficient to establish that the petitioner had been battered by or subjected to extreme cruelty by her citizen spouse.

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

- The petitioner's statements.
- The statement of the petitioner's sister.
- A psychological evaluation dated November 23, 2002.
- A letter of clarification from the psychologist to explain a discrepancy in the psychological evaluation.
- A photograph of the petitioner indicating that she had a black eye.
- Numerous police and court records relating to the petitioner's husband's criminal history.

According to the petitioner's and her sister's statements, the petitioner's spouse was verbally abusive and in one instance he pushed her such that she sustained a black eye. The spouse's violent criminal history corroborates the petitioner's and her sister's statements and other evidence of abuse in the record.

Because the petitioner furnished insufficient evidence to establish that she is a person of good moral character, she was requested on October 11, 2002, to submit additional evidence. The petitioner did submit a police clearance but it was based upon one name only, whereas the petitioner has used several different renditions of her name. On appeal, the petitioner submitted a police clearance based upon all names used by the petitioner, hence she has established that she is a person of good moral character.

The director determined and the AAO concurs that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. It is noted that the petitioner failed to submit evidence showing that she and her spouse shared assets or liabilities. She failed to submit evidence of their courtship, or wedding, or detailed evidence of their life in common. She failed to submit evidence of joint ownership of property. No children were born of the marriage. The petitioner's sister's affidavit is insufficiently specific to verify that the petitioner and her spouse entered into the marriage in good faith.

On appeal, counsel for the petitioner asserts that the director erred in evaluating the evidence of the petitioner's good faith marriage. The director noted that the lease submitted had been altered. On appeal, the petitioner's landlord's affidavit explains that he made corrections on the lease as to the number of children and the effective date of the lease. The AAO accepts the landlord's explanation for the alterations on the lease.

Counsel for the petitioner further asserts that an electric bill addressed to the petitioner's spouse is evidence of the petitioner's good faith marriage even though the petitioner's spouse was incarcerated as of the date of the bill. The AAO concedes that such an item might be considered evidence of the bona fides of the marriage, but it is just one item.

Counsel asserts that a physician's letter addressed to the petitioner's spouse dated May 2, 1997 does not predate the petitioner's marriage; hence, it should be considered. The AAO notes that the letter does not predate the marriage; nonetheless, the letter is not evidence of shared financial liability.

Finally, counsel asserts that the director erred in not considering an automobile insurance policy. The director noted that the automobile insurance policy indicated that the petitioner was the only driver covered under the policy; hence, it does not establish shared financial liability or assets. Counsel states that the petitioner's spouse's license had been revoked; therefore, he could not be named as a driver on the policy.

The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith. A police report on the record indicates that the petitioner's spouse had been living with his boyfriend for two years during his marriage to the petitioner.

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.