

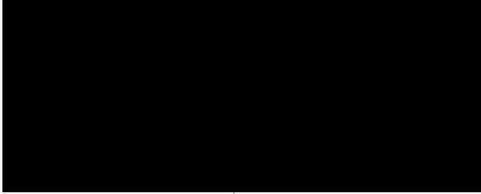
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U.S. Citizenship
and Immigration
Services

B9



FILE:

[Redacted]
EAC 02 254 52802

Office: VERMONT SERVICE CENTER

Date: JUL 20 2004

IN RE:

Petitioner: [Redacted]
Beneficiary: [Redacted]

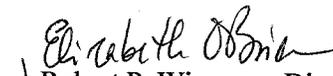
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 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 Mexico 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.

On July 1, 2003, the director denied the petition, finding that the petitioner failed to establish that she has resided with the U.S. citizen spouse; has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse; and entered into the marriage to the citizen in good faith.

On appeal, the petitioner asserts that the director erred in evaluating the evidence on the record.

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.

According to the evidence on the record, the petitioner has previously filed a Form I-360 on January 20, 1999 that was denied on June 30, 1999. According to the evidence, the petitioner's citizen spouse filed a Form I-130 on the petitioner's behalf that was approved on July 19, 2002. The petitioner filed a Form I-485 application for adjustment of status to permanent resident. The record indicates that counsel for the petitioner asked Citizenship and Immigration Services (CIS) to keep the I-485 pending while awaiting a decision on the Form I-360.

The evidence on the record shows that the petitioner wed U.S. citizen [REDACTED] on February 5, 1997 in Bronx, New York. The petitioner is nine years older than her citizen spouse. According to the record, the petitioner's spouse abandoned her in April 1997.¹ On July 31, 2002, the petitioner filed the instant self-petition, 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 director denied the petition, finding that the evidence was insufficient to establish that the petitioner had resided with her citizen spouse; has been battered by or has been the subject of extreme cruelty perpetrated by the citizen spouse during the marriage; and entered into the marriage to the citizen in good faith.

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 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 she has been battered by, or the subject of extreme cruelty by her U.S. citizen spouse, the director requested that she submit additional evidence on February 27, 2003. The petitioner responded to the request by asking for an extension of time to respond. The director granted the petitioner an additional sixty days in which to respond to his request.

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

The evidence relating to the abuse is as follows:

- An affidavit from the petitioner dated July 29, 2002, that states that her marital problems started about three months after they were married. The petitioner indicated that her husband was verbally abusive towards her and refused to financially contribute to the household. She stated that her

¹ One psychological evaluation indicates that the citizen spouse left the petitioner in April 1997, and another indicates that he left her in 1998.

husband tried to initiate anal sex but she refused. She further stated that once her husband got drunk and threatened to kill her with a penknife and to have her deported. He subsequently left for Puerto Rico without notifying her of his intention.

- A psychological assessment dated July 10, 2002, stating that the petitioner “requested to be seen because of symptoms of anxiety, depression, worthlessness, and apprehension that she had been experiencing since 1997 when she got married to [REDACTED]. The author of the assessment later referred to the petitioner’s spouse as [REDACTED]. The assessment indicates that the petitioner’s spouse left her a year after they wed and that he continuously used vulgar language toward her and made “unusual sexual demands” of her.
- An undated psychological assessment that was submitted with a previously filed Form I-360, which indicates that the petitioner’s citizen spouse was described as being emotionally abusive and called the petitioner cruel names and in April of 1997, “he abandoned [the petitioner].”
- An affidavit written by Mariela Hernandez, a neighbor of the petitioner and her citizen spouse that states that the petitioner told the affiant that her husband would “constantly curse and push her.”

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.

It is noted that the petitioner failed to file a complaint with the police against her spouse. She failed to submit reports and affidavits from court officials. The petitioner did not submit evidence that she sought refuge in a

² This reference to Lucas may be a typographical error.

shelter or elsewhere. She did not obtain an order of protection against her spouse or take other legal steps to end the abuse. The affidavits and evaluation are insufficiently specific as to the exact harm she suffered from her spouse. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The harm she indicates that she suffered from the spouse's sexual demands, emotional and verbal abuse do not rise to the level of abuse, or battery, or extreme cruelty under the regulation or statute.

The director determined 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).

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.

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. In reply, the petitioner provided the director with an affidavit. In the absence of evidence that the parties shared assets or liabilities, the evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith. On appeal, the petitioner states that her spouse took all the documentation she possessed. In review, the evidence is insufficient to establish that the petitioner wed her husband in good faith.

The director requested that the petitioner submit additional evidence to establish that she had resided with her spouse. The evidence on the record is limited to the statements of the petitioner and one neighbor. This evidence is insufficient to establish that the petitioner resided with her 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.