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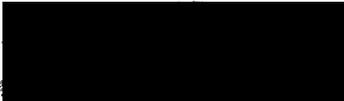
Office: VERMONT SERVICE CENTER

Date: JUL 28 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 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 Turkey 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 denied the petition after determining that the petitioner had failed to submit evidence, as had been requested, to establish eligibility for the benefit sought.

On appeal, the petitioner asserts that the allegations filed by his former wife against him are "totally untrue and false." He states that there was never any mental and/or physical abuse instituted by him. He further states that his spouse "has shown cruel and malicious intent since our divorce and prior to my person on more than one occasion." The petitioner submits additional evidence.

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 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;
- (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child¹; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

¹ On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act to enable an alien self-petitioner claiming to qualify for immigration benefits as the battered spouse or child of a U.S. citizen to no longer be required to demonstrate that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

The record reflects that the petitioner married his United States citizen spouse on October 17, 2001 in Turkey. The petitioner arrived in the United States as a conditional resident alien (CR-1) on January 18, 2002. On April 11, 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 director reviewed the evidence submitted with the Form I-360, Petition for Amerasian, Widow or Special Immigrant, and determined that the evidence was insufficient to establish the petitioner's eligibility for the benefit sought. The petitioner was, therefore, requested on October 2, 2002, to submit: (1) additional corroborating evidence to establish that he had been the subject of battery or extreme mental cruelty committed by his citizen spouse pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E); (2) evidence that the petitioner married his spouse in good faith pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H); (3) divorce papers and any other documents he has relating to his divorce proceedings; and (3) evidence of his good moral character pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F). The petitioner was granted 60 days in which to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. Based on the petitioner's failure to respond, the director denied the petition.

Although the director listed examples of the evidence the petitioner could submit to show that he had been the subject of extreme cruelty, no corroborating evidence was furnished to support these claims of the petitioner.

On appeal, the petitioner submits another statement indicating that he lived with his spouse for approximately ten days in Louisiana, where he received not only verbal and mental abuse, but also was forced to remain in total isolation, at times without food, transportation, and/or money. The applicant has failed to submit sufficient evidence to establish that he had been battered by, or had been the subject of extreme cruelty perpetrated by, his citizen spouse pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

On appeal, the applicant also submits a copy of a Petition for Divorce and a temporary restraining order filed by the petitioner's spouse on February 11, 2002, including a copy of the Judgment of Divorce effective on October 2, 2002.

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

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

On October 28, 2000, the President approved the enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A) of the Act to read, in pertinent parts, as follows:

(iii)(I) Any alien who is described in subclause (II) may file a petition with the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] under this clause for classification of the Alien (and any child of the alien) if the alien demonstrates to the Attorney General [the Secretary] 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.

(II) For purposes of subclause (I), an alien described in this paragraph is an alien...

(aa) (AA) who is the spouse of a citizen of the United States;

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and...

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse...

The record reflects that the petitioner and his citizen spouse were divorced on October 2, 2002, prior to the filing of the self-petition on April 11, 2002. Although the divorce of the two parties prior to the filing of the petition is no longer a bar, the petitioner has not established a connection between the legal termination of his marriage within the past two years and battering or extreme cruelty by his U.S. citizen spouse. In fact, it is noted that the Petition for Divorce and the temporary restraining order, filed by the petitioner's spouse, reflect that the petitioner's spouse had requested the court to issue a temporary restraining order and preliminary injunction against the petitioner for violence that he had perpetrated against his spouse. While the petitioner claims that, at no time did he physically and/or mentally abuse his spouse, the petitioner had 180 days from service of the petition for divorce to appeal or rebut his spouse's claim; however, no evidence was furnished to establish that he appealed his spouse's petition for divorce to the court. Furthermore, there is no evidence in the record to establish that the marriage or the intent to marry the U.S. citizen was entered into in good faith by the petitioner. Accordingly, the petitioner does not meet the criteria listed in 8 C.F.R. 204.2(c)(1)(i)(A) and (B), and the petition must be denied. Additionally, the applicant failed to submit evidence, as requested by the director, to establish that he entered into the marriage to the U.S. citizen in good faith pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H), and the petition also must be denied for this reason.

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that he is a person of good moral character. Pursuant to 8 C.F.R. 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or State in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing date of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which the petitioner resided for six or more months during the 3-year period immediately preceding the filing of the self-petition.

Although the petitioner was requested on October 2, 2002, to submit additional evidence, he failed to submit any evidence of good moral character.

On appeal, the applicant submits a statement from his employee [REDACTED] indicating that the petitioner is an excellent employee. The petitioner, however, has failed to submit a local police clearance or a state-issued criminal background check as required. Nor has the petitioner submitted a self-affidavit attesting to his good moral character. The petitioner has failed to overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(F); therefore, the petition also must 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.