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U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

*39*



FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 29 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.

*Cindy N. Honey 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 the Philippines 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 citizen of the United States.

The director determined that the petitioner failed 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 director, therefore, denied the petition.

On appeal, the petitioner's former counsel asserted that the evidence already presented satisfied the parameters for extreme cruelty, and resubmitted documents that had previously been entered into the record. An additional Form I-290B, Notice of Appeal, was submitted by the petitioner, with a letter stating that the Service (now Citizenship and Immigration Services) erred in failing to recognize that her husband's behavior caused her emotional distress, and that this behavior is an act of extreme mental cruelty.

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 child<sup>1</sup>; and
- (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

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<sup>1</sup> 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 so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show 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 last entered the United States as a B-2, nonimmigrant visitor for pleasure, on April 2, 1995, with authorization to remain in the United States until October 1, 1995. The petitioner married her United States citizen spouse on June 8, 1997, at Clark County, Nevada. On July 23, 2001, 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 United States 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 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) provides:

...[T]he 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, including rape, molestation, incest (if the victim is a minor), or forced prostitution 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 or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(2)(i) provides, in pertinent part, that:

Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

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 abuse 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.

On September 19, 2001 and again on August 21, 2002, the director requested additional evidence relating to the types of abuse suffered and the after-effects of the abuse, and informed the petitioner of the types of evidence that might be submitted to corroborate the petitioner's assertions. The director reviewed the evidence furnished by the petitioner, including evidence furnished in response to the requests for additional evidence. That discussion will

not be repeated here. Because the record did not contain satisfactory evidence to establish that the petitioner had been the subject of extreme cruelty, the director denied the petition.

On appeal, the petitioner's former counsel resubmitted documents that had previously been entered into the record, and had been discussed by the director in his decision, including a copy of the docket on file with the Clerk of Superior Court, County of Los Angeles, State of California, relating to the case of *The State of California v. Richard DiAngelo* [petitioner's spouse]. In that case, the petitioner's spouse was charged with 24 counts of offenses including rape, and other sexual assault of a person or persons other than the petitioner, and possession of a firearm, committed "on or about October 6, 1996," prior to the petitioner's marriage to the subject. The record reflects that: a search warrant related to the 1996 crimes was issued on June 29, 1998; the petitioner's spouse was arrested on June 1, 1999; he remained in custody; and, the court ordered a conviction judgment on May 5, 2000. Former counsel asserted that the evidence already presented satisfied the parameters for extreme cruelty. Former counsel noted that the petitioner's spouse: embraced female students in front of the petitioner, thereby "forcing her to watch his sexual advances towards other women;" reduced the petitioner's status to that of a "housekeeper" when females telephoned the home; and, told the petitioner he would ask \$50,000 to give her a divorce. Former counsel stated: "The abuse and the revelation of the husband's character started after the marriage... [the petitioner] went through a serious [sic] of mental abuse throughout her marriage period from 1998 until 2001." As a result, former counsel stated the petitioner had been pushed into becoming a "social recluse." Former counsel also resubmitted an undated affidavit, bearing no evidence of having been notarized, from the petitioner's co-worker, attesting to the petitioner's state of mind since early 1999.

The record also includes another Form I-290B, Notice of Appeal, signed only by the petitioner, and received prior to the Form I-290B submitted by her former counsel. On appeal, the petitioner states that counsel "no longer represents [her]." In her letter dated April 22, 2003, accompanying this appeal notice, the petitioner indicated that she had met her spouse in 1989, and "one year into the relationship" discovered that he had omitted telling her about a child he fathered, and that "a few years later" she found out he was seeing other women and had another child in Florida. It is unclear whether this occurred prior to, or following, the petitioner's marriage to him. The petitioner stated that the discovery of her husband's crimes [involving rape and sexual assault of [an]other woman/women], his incarceration, "hateful" words, and "his being a manipulator" have left her feeling a failure, has taken her "dignity, ...faith, and ...trust," and left her "depressed and suffer[ing] a lot of mental anguish."

On appeal, neither former counsel nor the petitioner submitted any additional evidence to establish that the spouse's behavior was that of extreme mental cruelty as claimed. The petitioner has not specified the actual timeframe in which the abusive actions occurred. It is noted that the petitioner's spouse has been detained or incarcerated since June 1999. Former counsel indicated that after the marriage, the petitioner endured mental abuse from "1998 until 2001;" the petitioner's statements indicate that she became aware of deceit as early as 1990, prior to her marriage, and are generalized concerning when she experienced abuse from her husband. The record does not establish that any abusive actions alleged are a part of an overall pattern of violence. The record does not include corroborating evidence in accordance with the regulations at 8 C.F.R. § 204.2(c)(2)(iv). The record also lacks documentary evidence of non-qualifying abuses that may be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E).

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.