

B9

U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER Date:  
EAC 02 143 52665

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

The petitioner is a native and citizen of India 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, finding that the petitioner failed to establish that he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse.

On appeal, counsel for the petitioner submits 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 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;

\* \* \*

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the evidence on the record, the petitioner was placed in removal proceedings on November 21, 1994 and on March 23, 1995, the petitioner wed U.S. citizen [REDACTED] in Reno, Nevada. The evidence further indicates that the petitioner was scheduled for a hearing before a Los Angeles Immigration Judge on November 2, 2004. On the Form I-360 petition, the petitioner indicated that he entered the United States on February 28, 1991. The evidence further indicates that the petitioner filed for asylum on November 27, 1992 and that his asylum application was denied. The petitioner's spouse filed a Form I-130 on the petitioner's behalf. The petitioner indicated that his wife disappeared prior to the first interview and again prior to the second interview on the Form I-130 petition. On March 22, 2002, the petitioner filed a Form I-360 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 director denied the petition, finding that the petitioner failed to establish that he has been abused by or subjected to extreme cruelty by his citizen spouse.

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 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)(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.

Because the petitioner furnished insufficient evidence to establish that he was abused or subjected to extreme mental cruelty by his U.S. citizen spouse, he was requested to submit additional evidence. The director listed evidence he may submit to establish battery or extreme mental cruelty. The record contains the following evidence regarding abuse and extreme cruelty:

- An evaluation written by a licensed marriage and family therapist (LMFT).
- The petitioner's affidavit.
- Statements of two security guards that worked at the mall where the petitioner owns a store.

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, counsel for the petitioner submits an evaluation written by a "LMFT" that indicates that the petitioner suffers "classic symptoms of depression." The evaluation states that the petitioner reported that his wife demanded money from the petitioner and stole merchandise from his store to support her cocaine habit. The evaluation further indicates that the petitioner's wife would sometimes "grab and squeeze his testicles or punch him -- once in the stomach when he was sleeping." The evaluation also indicates that the petitioner's wife rang up large debts and emptied out the petitioner's checking account. It is noted that the petitioner failed to mention that his wife sometimes grabbed, squeezed and punched him in his affidavit.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen wife. In his own affidavit, the petitioner indicated that his wife frequently came to him for money but if he refused, she would make a scene at the store. He said that his wife and her friends stole merchandise from his store and that she "became somewhat physically violent, trying to hurt [him] if [he] did not give her money." The petitioner further indicated in his affidavit that he could not close the door on the life he shared with his wife and move on to another woman or another country. The petitioner submitted affidavits of several security guards who work at the mall where the petitioner has a store. The security guards reported that the petitioner's wife caused "big scenes" in the petitioner's store, asking for money and stealing merchandise. The psychological evaluation is vague as to when and how physical abuse occurred.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, and court officials. He failed to submit evidence that he sought psychological or medical treatment for any abuse he endured. 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 abuse. He did not provide CIS with photographs of injuries or medical reports. 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).

Counsel for the petitioner asserts that living with an addict is abuse. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In review, the evidence is insufficient to establish that the petitioner was abused or the subject of extreme cruelty by his wife. The treatment he received does not rise to the level of abuse or extreme cruelty.

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.