



U.S. Citizenship
and Immigration
Services

BA

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

OCT 15 2004

SRC 02 120 51720

IN RE:

Petitioner:
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:

[REDACTED]

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

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 28-year old native and citizen of Syria 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 he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse.

On appeal, counsel for the petitioner asserts that "extreme cruelty has been shown" and that Citizenship and Immigration Services (CIS) must consider the petitioner's cultural perspective vis-à-vis his wife's conduct. Counsel indicated that he would submit a brief and/or additional evidence within 30 days of filing the appeal. More than five months have lapsed since the date of the filing of the appeal, and nothing more has been submitted for 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 or her 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 record reflects that the petitioner last entered the United States with advance parole on September 8, 2001. According to the evidence on the record, the petitioner initially entered the United States in F-1 student status on April 5, 2004, and completed a bachelor's degree in Aeronautical Science in April 2001. The evidence indicates that on September 1, 2000, the petitioner wed U.S. citizen [REDACTED] 14 years senior to the petitioner in age. The petitioner initiated divorce proceedings and his marriage to [REDACTED] was terminated on October 3, 2001. Eighteen months after the divorce, the petitioner filed a Form I-360 self-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 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).

Because the petitioner furnished insufficient evidence to establish that he has been battered or subjected to extreme cruelty by his citizen spouse, he was requested on October 14, 2003 to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty.

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

On appeal, counsel for the petitioner asserts that the evidence is sufficient to establish that the petitioner has been the subject of extreme cruelty perpetrated by the citizen spouse during the marriage. Counsel also asserts that CIS must consider the petitioner's subjective response to his wife's behavior in a cultural context when evaluating whether the citizen spouse's conduct constitutes extreme cruelty. Counsel's argument is not persuasive. CIS and AAO are bound to adhere to the statutory and regulatory definitions of *abuse* and *extreme cruelty*.

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.

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

- The petitioner's undated affidavit.
- The petitioner's undated letter.
- Affidavits of two friends of the petitioner with whom the petitioner states he has lost contact.

It is noted that the petitioner failed to submit reports and affidavits from police, judges, court officials, medical personnel, counselors, social workers or other social service agency personnel. The petitioner failed to seek refuge in a shelter for the abused. The petitioner failed to submit evidence that he sought psychological treatment for any abuse he endured. The petitioner's attorney states that the petitioner did not seek psychological help because it is not done in his country (Syria). He did not obtain an order of protection against his spouse or take other legal steps to end the abuse.

According to the petitioner's statements, his wife called him names and slipped pork into his food. She monopolized the phone and television. She hid his textbooks and slammed doors. According to the petitioner's friend, she threatened to kill the petitioner if he returned home, but the petitioner did not believe that threat.

The petitioner indicated that he took great offense when his wife returned home drunk one evening and he was alarmed to discover that she was abusing Prozac. He stated that he was very distressed to learn from his wife's doctor that his wife had been diagnosed with "a rare type of tumor that feeds on the liver called 'Lupus' and that [she] had 10 years to live." Finally, the petitioner states that his wife left him for a former boyfriend and he "collapsed." The petitioner's friends stated that the petitioner appeared to be in psychological pain.

The director determined that the treatment the petitioner received from his wife is not abuse or extreme cruelty as defined in the regulations. The AAO concurs. The conduct described does not rise to the level of extreme

cruelty. The petitioner expressed distress that his wife did not respect his religious tradition of abstaining from alcohol and pork. This is an issue of compatibility rather than one of abuse. The petitioner said he suffered because his wife left him. Abandonment does not necessarily equate to extreme cruelty. The evidence is insufficient to establish that the petitioner was abused or the subject of extreme cruelty by his citizen spouse during their marriage.

Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II) requires that the self-petitioner establish that he is married to a United States citizen or permanent resident at the time of the filing of the Form I-360 petition with certain exceptions. Here, the petitioner failed to demonstrate a connection between the legal termination of the marriage and battering or extreme cruelty by the U.S. citizen spouse. He failed to establish that he falls within one of the statutory exceptions.

Beyond the director's decision, the record contains scant evidence to demonstrate that the petitioner had resided with his citizen spouse for the claimed period of September 2000 – September 2001. The petitioner submitted to CIS a lease which only he had signed, albeit twice, and financial statements addressed to the petitioner and his spouse at the same address. The bank statements were issued to the petitioner and his spouse, but only cover the period of July 17, 2001 to September 14, 2001. Further, the lease, signed in April 2001, was not effective until August 2001, one month before the petitioner claimed he ceased to live with his citizen spouse. Therefore, there is insufficient evidence that the petitioner resided with the citizen spouse as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(D). For this additional reason, the petition may not be approved.

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.