

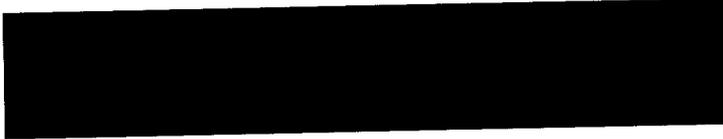
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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **APR 06 2005**
EAC 03 173 50757

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:

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.

Mari Johnson

Σ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition on August 5, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic 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 she had been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On appeal, 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 . . . 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 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.

The record reflects that the petitioner wed United States citizen, [REDACTED] on March 14, 1997 in Yonkers, New York. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on April 14, 1997. The petitioner filed a Form I-485 concurrently with the Form I-130. The district director denied the Form I-130 petition on February 24, 2000 due to abandonment. On May 16, 2003, the petitioner filed a 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 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).

The regulation at 8 C.F.R. § 204.2(c)(i) requires the petitioner to show that she has resided with her citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she had resided with the citizen spouse, had been battered by or the subject of extreme cruelty by her citizen spouse, is a person of good moral character and entered into the marriage in good faith, she was requested on April 22, 2004 to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that she had resided with her spouse, that she married her spouse in good faith, and that she is a person of good moral character.

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, the petitioner submits additional evidence.

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

- A psychological assessment dated July 10, 2004.
- The statement of a friend of the petitioner.
- A December 23, 2002 police incident report.
- The petitioner's statement on appeal.

The psychological assessment indicates that the petitioner's spouse became abusive after serving a three-year stint in prison for a drug possession charge. The assessment states that the petitioner's husband slapped and grabbed her, broke the furniture, took money from her bank account and "often threatened to kill her." The assessment states that the petitioner made police reports but feared following through. The assessment was performed approximately four years after the petitioner and her husband separated. The allegations in the assessment and those written in the notice of appeal are incongruent. On the appeal form, the petitioner mentioned her husband's sexual abuse but failed to mention that she was slapped and bruised by her husband. The psychological assessment fails to mention the sexual abuse. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It is noted that the petitioner provided evidence of a single complaint with the police against her spouse. The police incident report states that the petitioner told the police that her husband had told her that he was going to kill her and then himself. The petitioner's friend's statement indicates that the petitioner's marriage broke up "mostly because of [her husband's] behavior." The friend failed to describe the behavior. The petitioner did not submit evidence that she sought refuge in a shelter or elsewhere. She did not obtain an order of protection against her spouse or take other legal steps to end the abuse. On appeal, the petitioner states that her "emotional and mental state of health is affected with the nightmares while I was a dutiful woman, pleasing [my husband's]

wishes and sexual fantasies against my moral values.” Her statements 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).

It is further noted that the petitioner failed to submit sufficient evidence to establish that she is a person of good moral character. In a request for additional evidence, the director specifically asked the petitioner to submit her own affidavit supported by police clearances from each place she resided for at least six months during the three-year period before filing the petition. The petitioner submitted evidence that she was arrested on September 24, 2002, charged and convicted of driving while under the influence of alcohol. She did not submit the requested 3-year police clearances. The evidence is insufficient to establish that the petitioner is a person of good moral character. 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.