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U.S. Citizenship
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FILED [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: APR 07 2005
EAC 03 101 50690

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition and 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 Brazil who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director denied the petition, finding the petitioner failed to establish that he had been battered by, or had been the subject of extreme cruelty perpetrated by, the lawful permanent resident spouse.

On appeal, counsel for the petitioner submits a brief.

The regulation at 8 C.F.R. § 204.2(c)(1), in effect at the time the self-petition was filed, 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; and
 - (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner married his lawful permanent resident spouse on April 3, 1995 in Miami Beach, Florida. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on June 18, 1997. On February 7, 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, his lawful permanent resident 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 resided with his spouse, is a person of good moral character, entered into the marriage in good faith and has been abused by, or the subject of extreme cruelty perpetrated by his spouse, the director asked him to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that he had resided with his spouse, that he married her spouse in good faith, that he 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, counsel for the petitioner submits a brief.

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

- A psychosocial evaluation of the petitioner.
- An affidavit of [REDACTED] a friend of the petitioner.

It is noted that the petitioner failed to file a complaint with the police against his spouse. He did not submit evidence that he sought refuge in a shelter or elsewhere. He did not obtain an order of protection against his spouse or take other legal steps to end the abuse. To a therapist, the petitioner complained that his wife cursed and demeaned him, rang up bills, socialized apart from him, and slept with another man. [REDACTED] stated that he witnessed some disturbing behavior on the part of the petitioner's wife, including drinking heavily and behaving belligerently towards the petitioner.

As provided in 8 C.F.R. § 204.2(c)(1)(vi), the qualifying abuse must have been **sufficiently aggravated to have reached** the level of "battery or extreme cruelty." The petitioner has failed to establish that the alleged abuse was sufficiently aggravated to have reached the level of "battery or extreme cruelty." The petitioner failed to establish he was battered by or was the subject of "extreme cruelty" as **contemplated by Congress**, and to overcome the director's finding pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E).

ORDER: The appeal is dismissed.