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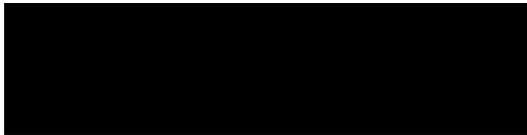
Office: VERMONT SERVICE CENTER

Date: APR 28 2005

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 on September 29, 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 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 she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner asserts that there is sufficient evidence on the record to establish that the petitioner was battered by her citizen spouse.

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 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 regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

The record reflects that the petitioner last entered the United States as a K-1 fiancée on March 12, 2001. According to the evidence on the record, the petitioner wed United States [REDACTED] on April 21, 2001 in Reno, Nevada. The petitioner filed a Form I-485 application to register permanent residence or adjust status on May 3, 2001. In response to a notice of an interview in connection with the

Form I-485 application, the petitioner's counsel informed Citizenship and Immigration Services (CIS) that the petitioner was unable to attend the interview because she had separated from her husband. On June 20, 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)(1)(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 her spouse, is a person of good moral character, entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by her citizen spouse, the director asked her 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, counsel for the petitioner asserts that the record contains sufficient evidence to establish that the petitioner is a battered spouse and warrants a favorable exercise of discretion in approving her self-petition.

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:

- The petitioner's statement dated July 7, 2004.
- Four statements of friends and family members of the petitioner.
- The petitioner's medical records from the Santa Clara Valley Medical Center indicating her mental health treatment record.

It is noted that the petitioner failed to file a complaint with the police against her spouse. She failed to submit reports and affidavits from court officials, counselors, or social workers. The petitioner failed to submit evidence that she sought medical treatment for any abuse she endured. She 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.

In a statement dated July 7, 2004, the petitioner wrote:

[A] few months after the marriage, my husband started abusing me one way or another. He did not allow me to go out alone for shopping. If I [went] out he would locked [sic] me in the room for hour. He did not allow me to make phone calls to my family. Some[times] he hit me while he was drunk. I did not report this matter to police because, I wanted to save my marriage and in my culture, we do not call police for family matters. Sometimes he did not give food for just to punish me. He wanted to be very possessive and did not want me [to] watch television. My physical condition very week and got went into depression. One day he kicked me out of his home and told me to go away. But I did not move out and begged him to let me stay with him. When he started hitting me routinely, I had no other option, but to leave that place for my safety.

The petitioner's 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).

The petitioner submitted four identical declarations that state that the petitioner's "husband started mentally and physically abused [sic] her, put her in solitary environment and does no [sic] allow her to go out or to have contact with her relatives and friends." The authors of these declarations failed to indicate how they became aware of the alleged abuse.

The petitioner provided medical records indicating that she tried to cut herself and called a suicide hotline. She was involuntarily committed to a mental health facility for 24 hours. The intake notes and assessment state that the petitioner left her husband due to mental abuse and that she was stressed by her inability to get a work permit, among other things.

In review, the evidence is insufficient to establish that the petitioner was battered by, or the subject of extreme cruelty, perpetrated by her citizen spouse during the marriage.

In addition, the director determined and the AAO concurs that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. The petitioner provided CIS with her own statement and four statements from friends and relatives. The language in the statements is identical. The statements provide that the petitioner wed her spouse on April 21, 2001 and that they lived together in Tracy, California. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith. The statements are insufficiently specific to establish the bona fides of the marriage. She provided no insurance policies in which she or her spouse is named as the beneficiary. She provided no bank statements, tax records or other documents indicating that the petitioner and her spouse shared responsibilities. The petitioner submitted no evidence of joint ownership of property. No children were born of the marriage.

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.