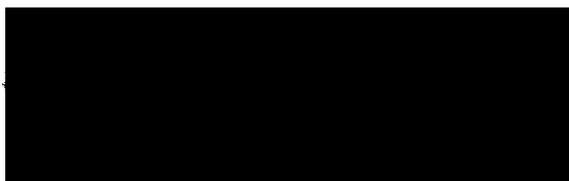


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invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE: [Redacted]
EAC 03 246 55363

Office: VERMONT SERVICE CENTER

Date: AUG 30 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:
[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.

Mari Johnson

2 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director 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 34-year old native and citizen of Nepal 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 had been battered by, or had been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen spouse during the qualifying relationship.

The issues of whether the petitioner was battered or subjected to extreme cruelty by his wife and whether the petitioner's child was battered or subjected to extreme cruelty by the citizen spouse are separate, independent (rather than cumulative) issues; an adverse finding on either issue is, by itself, sufficient to warrant denial of a petition.

On appeal, counsel for the petitioner asserts that the petitioner and his U.S. citizen child have been the subject of extreme cruelty perpetrated by the 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 petitioner indicated on several forms that he entered the United States as a nonimmigrant student. He also indicated that he lost his Form I-94 arrival/departure card. The evidence indicates that on April 21, 2000, the petitioner wed U.S. citizen [REDACTED] Papillion, Nebraska. Tedell Mabry filed a Form I-130 petition on the petitioner's behalf on March 8, 2001. The Form I-130 petition was approved on July 10, 2001. The petitioner's wife initiated divorce proceedings and their marriage was terminated on September 25, 2002. On August 15, 2003, 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. He also claimed eligibility as the father of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. 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).

Because the petitioner furnished insufficient evidence to establish that he or his child had been battered or subjected to extreme cruelty by his citizen spouse, he was requested on July 6, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. Counsel for the petitioner requested a 60 day extension in which to submit additional evidence.

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 and his child have been the subject of extreme cruelty perpetrated by the citizen spouse.

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 or the self-petitioner’s child, 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 and his child were subjected to battery or extreme cruelty by the United States citizen spouse. The evidence consists of the following:

- The petitioner’s letter dated August 11, 2003.
- A letter from a friend of the petitioner dated October 28, 2004.
- A police report dated November 15, 2002.
- An ex parte harassment protection order against the petitioner’s wife’s boyfriend dated October 17, 2002.
- Extensive medical documentation about the petitioner’s child.
- Limited medical documentation showing that the petitioner has been prescribed an anti-depressant.
- An application to show cause prepared by the petitioner’s counsel.

It is noted that the petitioner failed to seek refuge in a shelter for the abused or medical treatment for injuries. He did not obtain an order of protection against his spouse, but rather against her boyfriend. The statute and regulations require that the petitioner establish that he was battered by, or the subject of extreme cruelty perpetrated by, the citizen spouse. There is no provision for abuse by proxy.

According to the petitioner's statement, his wife became increasingly jealous and became pregnant against his will. "She fooled around with other guys so [he] wasn't sure that she was pregnant by [the petitioner]." The petitioner stated that his wife chased him with a knife. They argued. She began drinking and "smoking weed." She threatened to report him to Citizenship and Immigration Services (CIS) if he would not give her money. She called him names such as "stupid Nepali." She would lock him out of the house. She would "bring in her lovers in the house and have sex while [the petitioner] was with [the] baby down stair [sic]." "She had her boy friends harass [him] and asked [him] to get out of the house. They threaten to call [CIS] if I call the police on them. She started bringing different guys everyday and leaving baby crying in the room." The petitioner stated that his wife's boyfriend threatened to kill him several times and even attacked him.

A roommate of the petitioner wrote a statement indicating that on May 9, 2003, he observed the boyfriend chase the petitioner and the police were called and arrested the boyfriend. The roommate further stated that on November 11, 2003, he accompanied the petitioner to his wife's house and witnessed the boyfriend hitting the petitioner with his fist. He said that the police appeared at the scene but the boyfriend fled.

It is noted that the petitioner submitted only once police report, not two, even though his roommate stated that the police were on the scene at the time of two separate incidents and presumably would have written reports. It is further noted that the petitioner failed to submit a report by the police who arrived at the scene on November 11, 2003. The petitioner did submit a police report dated November 15, 2002, which indicates that the petitioner walked into the police station to make a report about the November 11, 2002 incident.

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 evidence is insufficient to establish that the petitioner was abused or the subject of extreme cruelty by his citizen spouse *during the qualifying relationship*. The petitioner submitted evidence regarding his wife's treatment beginning with their courtship up through the present. To establish eligibility, the petitioner must 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 during the self-petitioner's marriage to the abuser.

The petitioner and his wife were divorced on September 25, 2002. The police report is dated November 15, 2002. The petitioner failed to specify exactly when much of his wife's conduct occurred.

The petitioner asserts that his wife has subjected their child to extreme cruelty. In support of his assertion, he submitted extensive medical documentation about his daughter. The medical documentation indicates that his daughter has been diagnosed as "failing to thrive." The record also contains evidence that the petitioner brought his daughter to licensed social worker at the Children's Hospital on December 30, 2003 and that the social worker made a verbal report to Child Protection Services. It is noted that the record does not contain evidence of an investigative report by Child Protection Services, which could have corroborated the petitioner's claim regarding his child's treatment. Accordingly, the petitioner has failed to establish that his child was subjected to battery or extreme cruelty by the U.S. citizen spouse.

Beyond the director's decision, the petitioner has not established that he is a person of good moral character as required by the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petition was filed on September 4, 2003. In a

request for additional evidence, the director specifically requested that the petitioner submit police clearances or records from each place he had resided for at least six months during the 3-year period before filing the Form I-360 petition in accordance with the requirements of 8 C.F.R. § 204.2(c)(2)(v). The petitioner provided a clearance from the Douglas County Sheriff. However, the record indicates that the petitioner also resided in more than one city in the 3-year period preceding the filing of the petition. According to CIS records, the petitioner was arrested on September 25, 1996, and charged with driving under suspension and bad checks (\$100 - \$500) in Papillion, Nebraska. The charge of bad checks (\$100 - \$500) was subsequently dismissed. The petitioner was convicted of driving under suspension, placed on probation for a period of nine months and fined \$50. There is nothing in the record establishing why the petitioner's driver's license had been suspended. The petitioner should have provided the final disposition for his charges and clearances from each place he resided for at least 6 months during the 3-year period before filing the petition. The petitioner failed to establish that he is a person of good moral character. For this additional reason, the petition must be denied.

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.