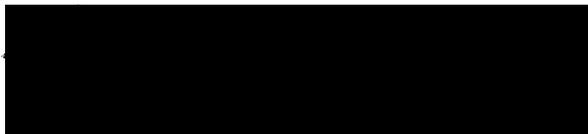


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FILE: [Redacted]
EAC 01 126 51490

Office: VERMONT SERVICE CENTER

Date: DEC 16 2005

IN RE: Petitioner: [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)

IN 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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of the Philippines 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.

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 [Secretary of Homeland Security] 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;

* * *

(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.

According to the evidence in the record, the petitioner entered the United States as a nonimmigrant visitor on February 19, 1989. The petitioner married [REDACTED] on November 12, 1992. The marriage was

terminated by divorce on October 8, 1994. The petitioner then married United States citizen [REDACTED] in January 27, 1997 in San Jose, California. That marriage was terminated by divorce on December 25, 1999.

On March 12, 2001, the petitioner filed the instant Form I-360¹ claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by; her citizen spouse during their marriage. On the Form I-360, the petitioner fails to provide the information requested in Part 7 related to "information about the U.S. citizen . . . abuser" including his name, date of birth, country of birth, and how long the petitioner resided with her spouse. The documentation submitted in support of the petition supports a claim of abuse against [REDACTED] but contains no evidence indicating that the petitioner claims that she has been battered or subjected to extreme cruelty by [REDACTED]. Accordingly, the director denied the petition because more than two years had lapsed since the petitioner was the spouse of [REDACTED] she was ineligible for this classification.

The petitioner submits a timely appeal³ and states:

[REDACTED] and I . . . married for a period of 2 years or more: Our marriage is in good faith, then after two years, he divorced me, he is treating [sic] me to send me to the Philippines, abused me emotionally and verbally. I've been in the United States for almost 13 years. No criminal records, pay my taxes, lastly I have a 12 years [sic] old son born here in the United States, have physical and legal custody. He needs me. Please I ask your compassion and leniency to grant me permanent resident. Please grant me also work authorization. I need to work for our daily living, me and my 12 years [sic] old son. Thank you.

We do not find the petitioner's statement on appeal to be persuasive. Although the petitioner claims on appeal that [REDACTED] "abused [her] emotionally and verbally," the record contains no evidence that the petitioner made such a claim in support of her petition⁴ and contains no evidence to support such a claim on appeal. There is no evidence that clearly indicates the petitioner sought classification based upon her relationship with [REDACTED] rather than [REDACTED]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

¹ In her decision, the director indicates the date of filing of the instant petition as "May 24, 2001." However, that filing date does not relate to the instant petition, EAC 01 126 51490, but rather to a subsequently filed petition, EAC 01 127 51810. The petitioner's Form I-290B indicates that she is filing an appeal of the decision related to the instant petition, not the petition filed on May 24, 2001.

² The record contains a "Domestic Violence Questionnaire," signed by the petitioner on May 14, 2001, alleging abuse against [REDACTED] and a restraining order issued against [REDACTED] on May 26, 1998 for the protection of the petitioner, her son and [REDACTED].

³ We note that although the petitioner was initially represented by counsel for the adjudication of the Form I-360 petition, the appeal was filed by the petitioner, not by counsel. There is no indication that the petitioner is represented by counsel on appeal.

⁴ The petitioner indicates that she was "emotionally, psychologically and physically *affected*," and that her spouse did not want to attend counseling. She does not allege any act of battery or incidents of extreme cruelty.

Even if the petitioner were able to establish that she had been battered by or subjected to extreme cruelty by [REDACTED] section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act indicates that a self-petitioner who has been a bona fide spouse of a United States citizen within the past 2 years must be able to demonstrate "a connection between the legal termination of the marriage with the past 2 years and battering or extreme cruelty by the United States citizen spouse." In this instance, there is no evidence that the petitioner's marriage to [REDACTED] was terminated because of the abuse perpetrated by him against the petitioner. We note that the divorce proceedings were not initiated by the petitioner, but rather [REDACTED] claim was based upon "irreconcilable differences."

As stated above, the record contains no evidence of abuse perpetrated by [REDACTED] against the petitioner. Although the record does contain sufficient evidence to support a claim of abuse against the petitioner's former spouse, [REDACTED] at the time of filing the petitioner had been divorced from him for more than two years.

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.