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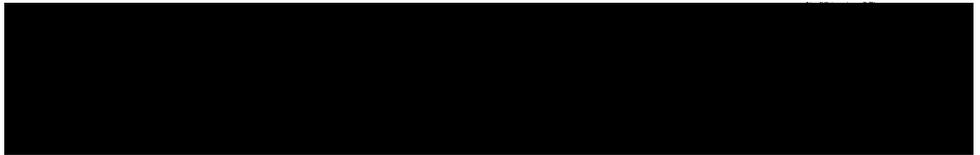
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Office: VERMONT SERVICE CENTER

Date: DEC 16 2005

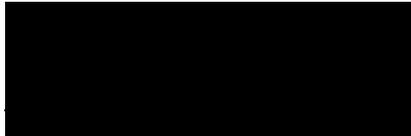
IN RE:

Petitioner:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the 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 Peru 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 by or the subject of extreme cruelty perpetrated by her citizen spouse.

The petitioner, through counsel, submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, 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 [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;

(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.

According to the information contained in the record, the petitioner wed United States citizen [REDACTED] on January 27, 1997 in Staten Island, New York. On March 26, 1997, the petitioner's spouse filed a Form I-130 in the petitioner's behalf. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. Both the petition and the application appear to remain unadjudicated.

On August 2, 2001, 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, her citizen spouse during their marriage. The petition was denied on March 29, 2002 based upon the director's finding that the petitioner failed to establish she had been battered or subjected to extreme cruelty by her citizen spouse.

The petitioner filed the instant petition on June 9, 2004. The petition was denied by the director on April 13, 2005, based upon the determination that the petitioner failed to establish that she has been battered or subjected to extreme cruelty by her citizen spouse.

The petitioner, through counsel, files a timely appeal and brief with no additional evidence.

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 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).

At the time of filing, the petitioner submitted no documentation to support her claim of abuse. Accordingly, on January 24, 2005, as it relates to the petitioner's claim of abuse, the director requested the petitioner to submit further evidence, to include:

- Reports and affidavits from: police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that you have sought refuge in a shelter for the abused.
- Photographs of your injuries, and affidavits from witnesses, if possible.

- A statement, in your own words describing the relationship with your abuser. Be as specific and detailed as possible, including an explanation of the type of abuse (e.g., verbal, social isolation, possessiveness, quality of life) suffered and the after-effects of the abuse.
- Affidavits from individuals who were present at the time the incident(s) occurred.

The petitioner responded to the director's request on March 11, 2005 by submitting a statement from the petitioner, a police report, a "Certificate of Attendance" from Women Rising, and a letter from [REDACTED] a social worker at the North Hudson Community Action Corporation Health Center.

The director denied the petition after reviewing the evidence contained in the record.

In counsel's appellate brief, counsel argues that the petitioner's spouse was "indifferent" toward the petitioner and yet "directed" conduct toward her that "caused severe emotional distress." Counsel further argues that the petitioner's "mental state had been injured" because her husband abandoned her. Finally counsel argues that because of the petitioner's spouse's drug addiction, the petitioner's spouse "started a lot of unnecessary arguments in the house, yelled screamed and often displayed rage in the household," that he accused the petitioner of being "worthless," and "came and went at odd hours without explaining his whereabouts."

We note at the outset that the petitioner makes no claim that she has been battered. Thus, the sole issue to be determined on appeal is whether the evidence in the record supports a finding that the petitioner has been subjected to extreme cruelty.

In her statement, the petitioner describes her husband's incarceration and problems with drugs. Although the record contains copies of court documents and a police report, the documents do not support a finding of extreme cruelty. Rather, the court documents are related to the petitioner's spouse's drug related arrest and conviction and his failure to pay child support. The police report, dated March 12, 2004, relates to the petitioner's claim that someone changed her mailing address without her knowledge but does not establish that her spouse was responsible for changing her address or that the change of address is in any way related to the petitioner's claim of abuse. Regardless, none of these documents indicate that the treatment received during her marriage rises to such a level as to be considered extreme cruelty.

Further, although the petitioner submits a document indicating that she "participated on the domestic violence Spanish speaking; educative support group," and a letter indicating that she "was briefly educated on the ground of domestic violence" and "participated in the domestic violence support group," such evidence does not affirmatively establish that the petitioner was subjected to extreme cruelty.

The fact that the petitioner's spouse was incarcerated and abused drugs does not establish a claim of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which 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

In this instance, the petitioner has failed to demonstrate that the treatment she received by her spouse during the marriage involved any overall pattern of violence, any act or threatened act of violence, or forceful detention, psychological or sexual abuse or exploitation.

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.