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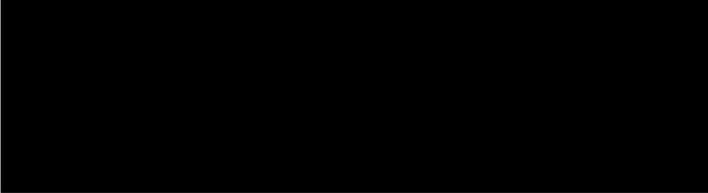
2005

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:
EAC 99 110 50703

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the preference visa petition. Upon further review, the acting director determined that the petitioner had been approved in error. The director properly served the petitioner with a notice of intent to revoke (NOIR), and subsequently revoked the approval of the petition. 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 Trinidad 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.

According to the evidence on the record, the petitioner wed U.S. citizen [REDACTED] May 16, 1997. The petitioner's spouse filed a Form I-130 petition on her behalf on September 19, 1997. The district director denied the Form I-130 petition on June 18, 1999, finding that the petitioner had failed to establish the bona fides of the marriage. The petitioner (beneficiary of the Form I-130) filed an appeal to the Board of Immigration Appeals (BIA). The BIA rejected the appeal as improperly filed because the beneficiary, rather than the petitioner, filed the appeal. The petitioner filed a Form I-360 self-petition on March 12, 1999, 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. On August 24, 2000, the director approved the petition. On September 3, 2003, the director issued a notice of intent to revoke (NOIR) approval of the Form I-360 petition. The director considered the petitioner's subsequent rebuttal, and on March 17, 2004, issued a final notice of revocation. In that notice, the acting director concluded that the petitioner had failed to demonstrate that she had been battered or the subject of extreme cruelty perpetrated by her citizen spouse.

On appeal, counsel for the petitioner submits a brief, evidence previously submitted and a statement of clarification by a licensed psychologist.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

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)(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).

After reviewing the file in connection with the petitioner's Form I-485 application to register permanent residence or adjust status, the district director forwarded the file to the service center with a recommendation that approval of the Form I-360 be revoked. The Vermont Service Center director concurred, finding that the petitioner furnished insufficient evidence to establish that she had been abused by, or the subject of extreme cruelty perpetrated by her citizen spouse; hence, the director issued a notice of intent to revoke (NOIR) approval of the petition, advising the petitioner of the deficiencies in the record and allowed 30 days to respond.

After careful review of the petitioner's rebuttal, the director revoked the approval of the petition. In her decision, the director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her NOIR. The discussion will not be repeated here.

On appeal, counsel for the petitioner asserts that the director improperly failed to consider the details and allegations of abuse that were submitted. Counsel further asserts that there is a reasonable explanation for the inconsistencies outlined in the NOIR.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her United States citizen spouse. The evidence consists of the following:

- The petitioner's affidavits dated February 9, 1999 and September 29, 2003.
- An evaluation dated July 16, 1999 performed by [REDACTED] a licensed certified social worker.

- An evaluation dated September 29, 2003 performed by [REDACTED] a licensed social worker and his statement on the petitioner's behalf.
- A letter dated February 8, 1999 from the petitioner's employer stating that the petitioner's spouse disappeared.
- A statement of clarification by [REDACTED] dated April 1, 2004.

In her initial affidavit, the petitioner indicated that her husband would disappear for a few weeks at a time, they argued and he left without leaving word of his whereabouts. In a subsequent affidavit, the petitioner stated that her husband threw things around the room near her, slapped her and shoved her into the wall. [REDACTED] licensed certified social worker stated in her evaluation that the petitioner's spouse was confrontive and verbally abusive and that he left the petitioner for the last time in the fall of 1997. In a subsequent evaluation dated September 18, 2003, [REDACTED] a licensed social worker, wrote that the petitioner informed him that her husband "tried to physically or sexually assault her but she was able to fight him off . . . There were allegedly also explicit threats to kill her, accompanied by violent physical intimidations . . ." In his evaluation, [REDACTED] suggested that [REDACTED] evaluation was deficient. In a subsequent statement submitted on appeal [REDACTED] wrote, "a lot has been made about the fact that [the petitioner] did not detail the specific incidences of physical and emotional abuse before her interview with me." He stated that he was able to "draw out the details" and concludes that the petitioner's "reports of extreme mental cruelty and actual battering appear credible and unexaggerated."

In review, the evidence is insufficient to establish that the petitioner was subjected to abuse or extreme cruelty, perpetrated by her citizen spouse. The more contemporaneous the evidence, the more reliable it is. Both the petitioner's initial affidavit and the initial evaluation, which were performed closer in time to the alleged abuse, described conduct that does not rise to the level of battery or extreme cruelty.

Beyond the director's decision, the petitioner has not established that she entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). According to the evidence on the record, the district director denied the immediate relative visa petition that the petitioner's spouse filed on her behalf because he failed to establish that he entered into the marriage in good faith; therefore, the petitioner may be subject to section 204(c) of the Act, 8 U.S.C. § 1154(c), which provides that no petition shall be approved if the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States by reason of a marriage determined by the Attorney General (now CIS) to have been entered into for the purpose of evading the immigration laws.

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.