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U.S. Citizenship
and Immigration
Services



B9

FILE: [REDACTED]
EAC 04 126 53787

Office: VERMONT SERVICE CENTER

Date: FEB 09 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.

Maui Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, 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 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.

The director denied the petition, finding that the petitioner failed to establish that she had been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On appeal, counsel for the petitioner submits a brief.

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 record reflects that the petitioner last entered the United States as a B-2 nonimmigrant visitor on September 19, 1992. The petitioner filed an application for asylum on May 6, 1994 that was denied on October 31, 1994. The petitioner was placed in removal proceedings in 1994. The petitioner wed [REDACTED], a U.S. citizen, on February 18, 1995 in Lake Tahoe, Nevada. [REDACTED] filed a Form I-130 petition on the petitioner's behalf on March 16, 1995. The petition was approved on May 8, 1995. Approval of the petition was revoked on September 22, 1995 because [REDACTED] withdrew the petition. The petitioner subsequently wed [REDACTED] and divorced on December 8, 1998. The petitioner wed U.S. citizen [REDACTED] in February 4, 2000 in Hayward, California. [REDACTED] filed a Form I-130 on the petitioner's behalf on February 6, 2001. He withdrew the petition on October 17, 2002; hence, action was terminated on the Form I-130 petition. On May 1, 2003, the petitioner filed a Form I-360 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 petitioner and [REDACTED] divorced on April 4, 2004.

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).

Because the petitioner furnished insufficient evidence to establish that she had been abused by, or the subject of extreme cruelty perpetrated by, her citizen spouse, she was requested on April 22, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty.

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 submits a brief, asserting that the petitioner was subjected to extreme mental cruelty perpetrated by her U.S. citizen husband.

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 affidavits dated March 20, 2003 and June 14, 2004.
- The statements of two friends of the petitioner.
- Two letters written by the petitioner's psychiatrist [REDACTED] [REDACTED] psychological report, consultation reports and discharge summary.
- A letter written by [REDACTED]

The petitioner described her husband's behavior in her affidavit. She wrote that she began to suspect that he was seeing another woman and when she confronted him, he yelled at her and threatened to leave her. She said that he threatened to have her deported and that in September 2002, he moved out of the house and cut off all communication with her. She stated that she attempted suicide shortly after her husband left her. The petitioner's friends wrote that the petitioner told them about her husband's infidelity, her suicide attempt and depression. Dr. [REDACTED] wrote that during individual sessions, the petitioner revealed that the situation in her family was "very bad . . . difficult . . . [and] abusive." [REDACTED] further indicated that the petitioner was hospitalized at an acute inpatient mental health unit due to severe depression and, after improvement, continued her treatment at an outpatient program. The evidence on the record shows that the petitioner was treated by a psychotherapist beginning in September 2002 and that she was under [REDACTED] care from October 10, 2002 until November 20, 2002.

In review, the description of the petitioner's husband's behavior towards the petitioner does not rise to the level of extreme cruelty as defined in the regulation. Infidelity and abandonment are not considered extreme cruelty. The petitioner failed to establish that her husband's treatment was abusive or constituted extreme cruelty. The

petitioner did establish that she suffered from severe depression after her marriage deteriorated, but this is insufficient to establish extreme cruelty.

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.