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FILE:



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Date: FEB 10 2005

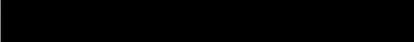
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IN RE:

Petitioner:



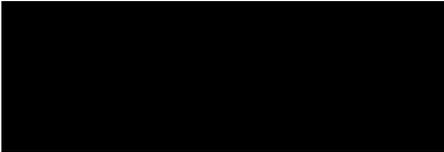
Beneficiary



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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of Saint Vincent 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 battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On appeal, the petitioner submits additional evidence.

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.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] 11 years junior to the petitioner in age, on August 26, 1996 in Brooklyn, New York. The petitioner's spouse filed a Form I-130 petition on behalf of the petitioner on October 7, 1996 and another Form I-130 on June 26, 1998. The district director denied both visa petitions on June 23, 2003, finding that the petitioner and beneficiary were divorced on February 18, 2003.¹ The district director further noted that the petitioner had failed to establish the bona fides of the marriage. On October 31, 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, her U.S. citizen spouse during their 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).

¹ The evidence on the record indicates that the petitioner's spouse initiated divorce proceedings on February 18, 2003. The record is silent as to when and whether the divorce was completed.

Because the petitioner had submitted insufficient evidence to establish that she had resided with her spouse, entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by, her citizen spouse, the director asked her to submit additional evidence. The director further requested evidence of the petitioner's husband's citizenship, the marriage certificate and proof of the legal termination of the marriage of the petitioner and her former spouse. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that she had resided with her spouse, and that she had married her spouse in good faith.

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, the petitioner submits additional evidence.

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 statements dated October 11, 2003 and August 30, 2004.
- An affidavit by the petitioner's 30-year old step-daughter.
- A letter dated September 18, 2002, written by [REDACTED] Counselor, New Horizons Adult Education Program, which states that the petitioner "was under a lot of pressure because . . . her husband . . . did not give her the forms to send to Immigration & Naturalization for her Green Card."
- Three brief letters written by friends of the petitioner indicating that the petitioner's spouse was verbally abusive and that he threw her out of their apartment.

In her initial statement of October 3, 2003, the petitioner indicated that her husband cursed her and tried to extort money from her prior to their interview with an immigration officer in connection with the Form I-130 petition. She wrote that her husband threatened to kill her and on September 25, 2001, he kicked her out of their apartment.

In a subsequent statement of August 30, 2004, the petitioner indicated that her husband threatened to kill her just as he had killed his prior wife and on December 12, 2000, he knocked her out with a piece of iron, thereby causing her blood pressure to rise such that she required emergency care. She further stated that her husband repeatedly threw her out of their apartment.

The petitioner's description of the alleged abuse in her initial statement is inconsistent with her latter description. In her initial statement, she failed to mention that her spouse knocked her unconscious with an iron piece causing her to seek emergency medical care. It is unclear why the petitioner withheld information or failed to mention her husband's more egregious alleged abuse. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Ms. [REDACTED] statement that the petitioner's spouse refused to file any papers with the Immigration and Naturalization Service is contradicted by the evidence on the record that he filed two Form I-130's on the petitioner's behalf.

It is noted that the petitioner failed to file a complaint with the police against her spouse. She failed to submit reports and affidavits from court officials, counselors, or social workers. The petitioner failed to submit evidence that she sought psychological or medical treatment for any abuse she endured. She did not submit evidence that she sought refuge in a shelter or elsewhere. She did not obtain an order of protection against her spouse or take other legal steps to end the abuse. The letters submitted are based upon second-hand knowledge. The petitioner failed to establish that she was battered by, or the subject of extreme cruelty perpetrated by, her U.S. citizen spouse.

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.