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**U.S. Citizenship
and Immigration
Services**

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B9

FILE:



OFFICE: VERMONT SERVICE CENTER

Date: **FEB 17 2005**

EAC 03 112 52599

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

R 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 on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Colombia 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 he had been battered by, or the subject of extreme cruelty perpetrated by, his U.S. citizen spouse.

On appeal, counsel for the petitioner submits a brief and asserts that the petitioner's testimony is consistent.

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 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 in the United States 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;

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the evidence on the record, the petitioner wed U.S. citizen [REDACTED] on April 12, 1996 in Palisades Park, New Jersey. The petitioner's wife filed a Form I-130 petition on his behalf on February 2, 1998. The Form I-130 was approved on March 3, 2000. The petitioner filed a Form I-485 on June 6, 2002. He appeared alone for an adjustment interview and informed Citizenship and Immigration Services (CIS) that his wife had left him and he intended to file a Form I-360 petition. The petitioner filed a Form I-360 on February 24, 2003, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

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

On appeal, counsel for the petitioner asserts that the petitioner was subject to emotional and physical abuse, that the petitioner's first and second affidavits are not inconsistent, that the director abused her discretion by failing to consider the petitioner's medical prescriptions as evidence that the petitioner was subjected to extreme cruelty, and that the abuse the petitioner suffered was so extreme that he entered into a clinically diagnosed depression.

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)(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)(i)(E) requires the petitioner to establish that he 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 he was abused or subjected to extreme mental cruelty by his U.S. citizen spouse, he was requested on January 26, 2004 to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. The record contains the following evidence regarding abuse and extreme cruelty:

- The petitioner's initial affidavit dated October 3, 2002.
- The petitioner's supplemental affidavit dated February 18, 2004.
- An affidavit of a friend of the petitioner [REDACTED] dated October 3, 2002.
- An affidavit of another friend of the petitioner [REDACTED] dated February 19, 2004.
- A police report dated September 18, 2002.
- Several illegible drug prescriptions for the petitioner.

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. Because the record did not contain satisfactory evidence to establish that the petitioner had been battered by, or has been the subject of extreme cruelty perpetrated by the citizen spouse during the marriage, the director denied the petition.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen wife.

The petitioner's affidavits are internally inconsistent. In his first affidavit, the petitioner stated that "[my wife] would not hit me. However she breaks anything in sight when she is mad." In his second affidavit, submitted in response to a January 26, 2004 request for evidence, the petitioner stated that his wife scratched his face, threw a lamp at him, threw an empty vodka bottle at him and cut him. Counsel for the petitioner asserts that the discrepancy is due to a translation problem and that the two affidavits are not discrepant. In review, AAO finds that the two statements are inconsistent and that the latter affidavit paints a far more dire situation than the first.

Two friends of the petitioner wrote affidavits on his behalf. One affiant said that she saw the petitioner's wife scream at him. The other affiant noted that the petitioner's wife was extremely jealous. The conduct

described in these affidavits does not necessarily rise to the level of battery or extreme cruelty.

The petitioner walked into a police station on September 18, 2002 and reported that "he had an argument with his wife . . . earlier this evening. [The petitioner] stated that his wife is a jealous woman and gives him a hard time. [The petitioner] further stated that after the argument his wife left the premises to an unknown location. [The petitioner] stated that he wants nothing done, just a report made." Even if every allegation in the report is true, the conduct does not rise to the level of battery or extreme cruelty.

Counsel for the petitioner asserts that the director erred in not considering the prescriptions written for the beneficiary. The record contains three prescriptions written on June 21, 2002, October 21, 2002 and November 24, 2002. The prescriptions are partially illegible. Even if the petitioner established that he was prescribed anti-depressants, this is insufficient proof that he suffered extreme cruelty.

The petitioner's wife abandoned the petitioner. Abandonment does not equate to extreme cruelty.

It is noted that the petitioner failed to submit reports and affidavits from counselors, or social workers. The single police report merely stated that the parties had an argument. He did not submit evidence that he sought refuge in a shelter or elsewhere. He did not obtain an order of protection against his wife or take other legal steps to end the abuse. He did not provide CIS with photographs of injuries. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). His testimony regarding his wife's behavior is inconsistent. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Beyond the decision of the director, the petitioner failed to establish that he is a person of good moral character as required by 8 C.F.R. § 204.2(c)(1)(i)(F). He submitted a letter from the Palisades Park Chief of Police that states that the petitioner has enjoyed a favorable reputation for the 11 years that he has lived in Palisades Park, New Jersey. He failed to submit a police clearance. For this additional reason, the petition may not be approved.

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.