

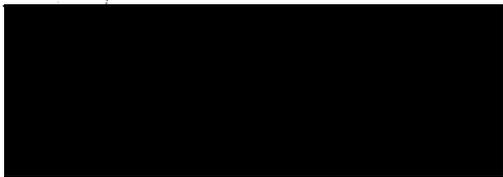
PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



B9

JAN 18 2005

FILE:

[Redacted]
EAC 03 228 54630

Office: VERMONT SERVICE CENTER

Date:

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.

Mari Johnson

ca 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 India 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 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 regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

The record reflects that the petitioner last entered the United States as a K-1 fiancé on December 11, 2000. According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on February 7, 2001 in Prince Frederick, Maryland. On March 7, 2001, the petitioner filed a Form I-485 application to register permanent residence or adjust status that was denied on February 4, 2002 for abandonment. The petitioner filed another Form I-485 on April 24, 2002 that was denied because the underlying labor certification was invalidated. The petitioner and his citizen wife divorced on September 11, 2002. The beneficiary was the beneficiary of an approved Form I-140 petition, immigrant petition for alien worker. Approval of the Form I-140 was ultimately revoked on July 15, 2003. On August 7, 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, his U.S. citizen spouse during their marriage.

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).

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that he has resided with her citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that he is a person of good moral character and had been abused by, or the subject of extreme cruelty perpetrated by his citizen spouse, the director asked him to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, and that he is a person of good moral character.

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.

On appeal, counsel for the petitioner submits a brief and additional evidence.

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

- The petitioner's statements.
- A paper titled *Information on Male Victims of Domestic Violence* by David Fontes.
- An article titled *Battered Women's Syndrome Applies to Men Too, Judge Finds* by [REDACTED] published in the *New York Law Journal* on December 8, 1999.
- An affidavit written by the petitioner's criminal defense attorney [REDACTED]
- A letter of psychologist [REDACTED] addressed "to whom it may concern" dated July 1, 2003.
- A letter of psychologist [REDACTED] addressed to the petitioner's immigration attorney dated June 16, 2004.
- A letter from [REDACTED] Nurse Specialist, stating she is treating the petitioner for major depression disorder and post-traumatic stress disorder.

- An unofficial partial transcript of the petitioner's attorney's examination of the petitioner regarding the incidents of May 5, 2001.

It is noted that the petitioner was convicted of second-degree assault against his wife on January 16, 2002 and that he did not submit corroborating evidence to establish that he sought an order of protection against his wife. He alleged that his wife called him names and would pound on the locked bathroom door, threatening to kill him. He said that his wife slapped him across the face and refused to see him. It is further noted that the petitioner did not submit evidence that he sought refuge in a shelter or elsewhere. He complained that his wife's family mistreated him, forcing him to work at their liquor store for long hours. The petitioner said that his wife aborted their child without the petitioner's consent. 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). The evidence is insufficient to establish that the petitioner was battered by, or the subject of extreme cruelty perpetrated by, his citizen spouse.

Beyond the director's decision, the petitioner has not established that he is a person of good moral character as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i)(F). For this additional reason, the petition may not be approved. Although he pled not guilty to the charge of assault in the second degree, he was found guilty, sentenced and fined. On appeal, the petitioner states that he did not understand the criminal proceedings well and was not advised of a right to a court translator.

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.