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U.S. Citizenship
and Immigration
Services

B9



FILE:



Office: VERMONT SERVICE CENTER

Date:

JAN 21 2005

EAC 04 164 53078

IN RE:

Petitioner:

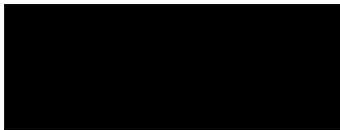


Beneficiary:

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 Plunson

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 he has 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 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.

The record reflects that the petitioner last entered the United States as a B-1 nonimmigrant visitor on March 14, 2001. According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on May 2, 2003 in Reno, Nevada. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on June 4, 2003. On February 9, 2004, the petitioner signed a Record of Sworn Statement in Administrative Proceedings indicating that he entered into a fraudulent marriage with [REDACTED] and that they were not living together as husband and wife. The petitioner's wife withdrew the Form I-130 petition. The petitioner was placed in removal proceedings on February 23, 2004. On May 3, 2004, 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 his 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 had resided with his spouse, entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by his citizen spouse, the director asked him to submit additional evidence in a notice of intent to deny (NOID). The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that he had resided with his spouse, and that he had married his spouse in good faith.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the NOID. The discussion will not be repeated here.

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 affidavit dated March 30, 2004.
- The petitioner's affidavit dated August 13, 2004.
- The petitioner's affidavit dated December 3, 2004.
- An affidavit of the petitioner's uncle and landlord.
- Affidavits of friends of the couple.

The petitioner's uncle, [REDACTED] wrote that the petitioner and his wife rented a room in his home and that sometimes the petitioner's wife would leave the house and stay with a friend for days and weeks at a time.

An affidavit of [REDACTED] a friend of the petitioner, that stated that the petitioner consulted her about his personal problems and that he was devastated by his wife's verbal abuse and her eventual abandonment.

On appeal, the petitioner submitted another affidavit by his uncle and another by a friend claiming that they had personally witnessed the petitioner's spouse's verbal abuse of the petitioner.

The petitioner stated that his wife "verbally abused [him] constantly on a number of occasions." He further stated that his wife would lock him of the house or out of her room many times. He said that she was very possessive and that his wife's behavior adversely affected his quality of life.

In review, the petitioner has failed to establish that the conduct he described rises to the level of battery or extreme cruelty.

Beyond the director's decision, the petitioner failed to establish that he entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). The record of proceeding contains the petitioner's sworn statement in which he states: "I entered a fraudulent [sic] marriage with [REDACTED] and we are not living together as husband and wife. I gave her money to buy her medication in exchange [for] petitioning me." On appeal, the petitioner states that he signed the above statement "under duress"; however, there is nothing in the record to establish that the petitioner admitted to entering into a fraudulent marriage under duress. Accordingly, the petitioner has failed to establish that he entered into the marriage in good faith. 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.