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BA

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 01 2005
EAC 03 160 51850

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition in a decision dated September 9, 2004. 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 Korea 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 his U.S. citizen spouse, is a person of good moral character, and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a brief, a supplemental brief dated April 9, 2005, 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 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 B-1 nonimmigrant visitor on March 16, 2002. According to the evidence on the record, the petitioner wed United States citizen [REDACTED] 12 years senior to the petitioner in age. The petitioner's spouse filed a Form I-130 petition on behalf of the petitioner and his daughter on November 17, 2002. On April 29, 2003, the petitioner filed a 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 first issue to be addressed in this proceeding is whether the petitioner established that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen spouse. 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, is a person of good moral character, entered into the marriage in good faith and has 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, that he had resided with his spouse, that he married his spouse in good faith, and that he is a person of good moral character. The director specifically requested that the petitioner submit the following:

- Reports and affidavits from: police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that he had sought refuge in a shelter for the abused.
- Photographs of his injuries and affidavits from witnesses, if possible.
- A statement, in his own words, describing in detail the petitioner's relationship with his abusive spouse.
- Affidavits by individuals, other than himself, who have personal knowledge of any incidents of abuse.

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.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse. In response to the RFE, the petitioner submitted a psychological evaluation from [REDACTED] Ph.D. dated July 5, 2004. The petitioner failed to submit reports and affidavits from police, judges, or court officials. He failed to submit evidence that he had sought refuge in a shelter for the abused. He did not provide Citizenship and Immigration Services (CIS) with photographs of injuries or affidavits from witnesses.

On appeal, the petitioner submits the following evidence:

- The petitioner's declaration submitted on appeal.
- A psychological report from [REDACTED] Ph.D., Licensed Clinical Psychologist, dated February 8, 2005.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit sufficient evidence and now submits additional evidence on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

In his evaluation, Mr. [REDACTED] recounted what the petitioner had told him, i.e., that initially his marriage went well until his daughter told him that his wife was smoking and drinking excessively. The petitioner attempted to help his wife obtain treatment to no avail. The petitioner's wife tried to extort the petitioner's money for a green card, then threw the petitioner and his daughter out of the house. The evidence qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty. Dr. [REDACTED] evaluation, without additional evidence, is insufficient to establish a pattern of abuse and to support a claim that qualifying abuse occurred.

The second issue to be addressed in this proceeding is whether the petitioner established that he entered into the marriage in good faith. The director determined, and the AAO concurs, that the petitioner failed to establish that he had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married his wife in good faith, such as insurance policies in which the petitioner or his spouse is named as the beneficiary; bank statements, tax records and other documents that show the petitioner shared accounts with his spouse; evidence of his courtship; evidence of joint ownership of property; birth certificates of children born to the petitioner and his spouse; and affidavits of friends and family who could provide specific information verifying his relationship with his spouse. The petitioner provided CIS with photographs taken at their wedding. The petitioner failed to submit copies of insurance policies in which he or his wife is named as the beneficiary. He failed to submit bank statements, tax records and other documents showing that he shared accounts and other responsibilities with his wife. He provided no evidence of joint ownership of property. No children were born of the marriage. The evidence on the record is insufficient to establish that the petitioner married his citizen spouse in good faith.

The final issue to be addressed in this proceeding is whether the petitioner established that he is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that he is a person of good moral character. In a request for additional evidence, the director specifically requested that the petitioner submit police clearances or records from each place he had resided for at least six months during the 3-year period before filing the Form I-360 petition. The petitioner failed to provide any clearances. On appeal, counsel for the petitioner asserts that the petitioner could not obtain police clearances without an order from CIS to have the petitioner fingerprinted. The pertinent regulations do not require that the police clearances be based on fingerprints. The petitioner has failed to submit police clearances based on a name check or any other evidence that he has met the good moral character requirement. The petitioner failed to establish that he is a person of good moral character.

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.