

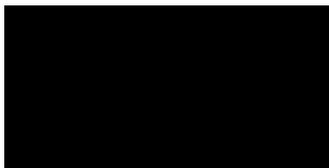
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
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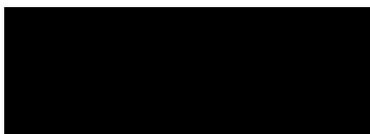
Office: VERMONT SERVICE CENTER

Date: JUN 01 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

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.

Robert P. Wiemann

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)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iv), as the battered child of a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that she had been battered or the subject of extreme cruelty perpetrated by her U.S. citizen parent and is a person of good moral character.

On appeal, counsel for the petitioner submits a brief, a supplemental brief dated April 9, 2005, and additional evidence.

Section 204(a)(1)(A)(iv) of the Act provides, in pertinent part, that an alien who is the child 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 the citizen parent, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent.

The regulation at 8 C.F.R. § 204.2(e) states, in pertinent part, that:

A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the child 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 parent;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident while residing with that parent;
- (F) Is a person of good moral character.

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-2 nonimmigrant visitor on April 29, 2001. According to the evidence on the record, the petitioner's father wed United States citizen [REDACTED] on July 20, 2002. The petitioner's stepmother filed a Form I-130 petition on behalf of the petitioner and her father 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, her U.S. citizen parent.

The first issue in this proceeding is whether the petitioner established that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen parent.

The regulation at 8 C.F.R. § 204.2(e)(1)(i)(F) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(e)(1)(vi).

Because the petitioner furnished insufficient evidence to establish that she is a person of good moral character, and had been abused by, or the subject of extreme cruelty perpetrated by, her citizen parent, the director asked her to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, and that she 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 she had sought refuge in a shelter for the abused.
- Photographs of her injuries and affidavits from witnesses, if available.
- A statement in her own words describing in detail her relationship with her abusive parent.

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 (RFE). 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 her United States citizen parent. In response to the RFE, the petitioner submitted a psychological evaluation from [REDACTED] Ph.D. dated July 5, 2004. It is noted that the evaluation is of the petitioner's father alone. The evaluation is based upon one session conducted approximately one and one-half years after the petitioner's father and citizen wife separated. The petitioner failed to submit evidence such as reports from the police, court officials, or her own health care providers. She did not submit evidence that she had sought refuge in a shelter for the abused. She did not provide Citizenship and Immigration Services (CIS) with photographs of injuries or affidavits of witnesses. The petitioner failed to submit her own statement describing in detail her relationship with her abusive parent.

On appeal, the petitioner submits the following evidence:

- The petitioner's father's unsigned declaration.
- A psychological report from [REDACTED] Ph.D., Licensed Clinical Psychologist, dated February 8, 2005, about the petitioner.

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 Obaigbena*, 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's father had told him, i.e., that the petitioner had told her father that his wife was smoking and drinking excessively and that she had cut the wires to her computer. The stepmother forced the petitioner to do all the laundry, clean the house, walk four miles from school and denied her lunch money. Five months after the petitioner's father wed, his wife threw the petitioner and her father out of the house. Dr. [REDACTED] report states that the petitioner suffered whenever her stepmother went on a drinking binge and became abusive. Dr. [REDACTED] does not provide information about specific instances of abuse. The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." The evidence is insufficient to establish a pattern of abuse and to support a claim that qualifying abuse occurred.

The other issue in this proceeding is whether the petitioner established that she 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 she is a person of good moral character. In a RFE, the director specifically requested that the petitioner submit police clearances or records from each place she had resided for at least six months during the 3-year period before filing the Form I-360 petition. The petitioner failed to provide these in response to the RFE or on appeal.



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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.