



U.S. Citizenship
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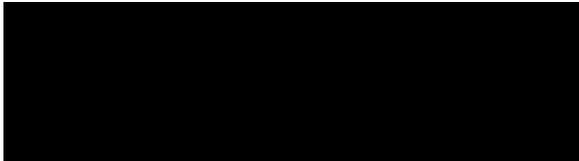
Office: VERMONT SERVICE CENTER

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 38-year old native of Jamaica who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen. According to the evidence in the record, the petitioner wed her United States citizen spouse on October 31, 1996 in West Palm Beach, Florida. On November 27, 1996, the petitioner's spouse filed a Form I-130 petition on her behalf. The petition was denied on January 24, 1998. On July 27, 1998, the petitioner's spouse filed a second Form I-130 on the petitioner's behalf.

On November 13, 1998, the petitioner was placed in removal proceedings and ordered removed by an Immigration Judge on March 17, 1999. The Form I-130 petition was approved on July 30, 1999. The petitioner's removal order was reopened on April 6, 2001 and the Immigration Judge found the petitioner ineligible for adjustment of status but eligible for voluntary departure. The petitioner failed to file written notification that she would pursue voluntary departure and on May 22, 2001 the Immigration Judge again ordered the petitioner to be removed from the United States. On May 21, 2002 the Immigration Judge granted the petitioner voluntary departure in lieu of removal. On October 17, 2002, the petitioner failed to show for her court-ordered departure.

On July 11, 2003, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage. The petitioner claims to have resided with her citizen spouse from October 1996 until August 2001. In a decision dated November 30, 2004, the director denied the petition, finding that the petitioner failed to establish that she is a person of good moral character and that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

The petitioner, through counsel, submits a timely appeal.

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)(1)(i)(E) 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 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 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.

Further, 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 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 she has been battered by or the subject of extreme cruelty by her citizen spouse and that she is a person of good moral character, on June 3, 2004, the director requested additional evidence. The director listed evidence the petitioner could submit to establish each of these claims.

On July 30, 2004, petitioner's counsel requested an extension of 60 days in which to submit a doctor's evaluation.

The petitioner responded to the director's request on September 16, 2004. In reference to the petitioner's claim that she has been battered by or the subject of extreme cruelty by her citizen spouse, the petitioner submitted a psychological report from a licensed psychologist. The petitioner submitted no evidence related to her good moral character. The director, in her decision, reviewed and discussed the evidence furnished by the petitioner. The discussion will not be repeated here.

On appeal, the petitioner, through counsel, provides a brief and a police clearance. As it relates to the director's finding regarding the lack of evidence related to the petitioner's claim that she has been battered by or the subject of extreme cruelty by her citizen spouse, counsel states:

[O]ur client states that since this physical abuse was a very traumatic experience for her she was not able to generally speak about the abuse. It was only after Dr. Fonte placed her at ease with herself, that she was able to confront her fears and speak about the abuse she received. The doctor-patient relationship that was established at that session brought out this matter as she could not speak of it before.

Counsel does not elaborate on this argument or provide any documentary evidence to support his statement; the statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). We note the record contains no statement from the petitioner documenting the "physical abuse" claimed by counsel. Further, the record contains no evidence that the petitioner was subjected to extreme cruelty. In the statement submitted by the petitioner at the time of the initial filing, the petitioner states that she was the "main source of income," that she was "betrayed and mentally abused" because her spouse left her for another man. She makes no claim of physical abuse or abuse that rises to the level of extreme cruelty.

In the report submitted by the licensed psychologist, the psychologist expresses his opinion that the petitioner is "socially withdrawn and depressed," and that her elevated scores on certain psychological tests are indicative of "individuals who are reporting symptoms of anxiety and depression, feel guilty, fear loss of emotions, and feel mistreated." The psychologist concludes that given the petitioner's "recent experience in her failed marriage, and her feelings of being threatened . . . as well as dealing with the ordeal of daily abuse and losing her husband to other men," such symptoms are "not unusual." Although we do not dispute the fact that the petitioner suffered from depression as the result of her spouse's betrayal, we do not find the evidence contained in the record is sufficient to establish that the abuse she suffered rose to the level of battery or extreme cruelty.

As it relates to the police clearance submitted on appeal, we note that the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Even if considered on appeal, we find the police clearance would be insufficient to establish the petitioner's good moral character. Specifically, the clearance indicates that the petitioner had no criminal record based upon a search of the petitioner's "name only." The request for evidence issued by the director stated:

Submit evidence of your good moral character. The following may be submitted:

1. Your own affidavit *supported by police clearances* * or records from each place you resided for at least 6 months during the 3-year period before filing this petition. If you have resided outside the United States during this 3-year period, you must submit police clearances from those locations.
2. If police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support your affidavit. Evidence may include affidavits from responsible persons who can knowledgeably attest to your good moral character.

* For your convenience a listing of agencies that can assist you in obtaining police clearances from each state in the United States has been enclosed with this notice. Locally issued clearances may still be submitted, and are required from localities that do not offer state issued clearances. *Please note: if the police clearance is researched by name only, you must supply the law enforcement*

agency with all aliases you have used, including maiden and/or married name(s), if applicable.

[Emphasis added.]

As the record reflects the petitioner has at least three variations on her name, the clearance based upon a search under the name [REDACTED] would not be considered sufficient.

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.

ORDER: The appeal is dismissed.