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U.S. Citizenship
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Services

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MAR 08 2005



FILE [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE:
EAC 02 159 52719

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

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

ON BEHALF OF PETITIONER:
[REDACTED]

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 preference visa petition was denied by the Director, Vermont Service Center, and was subsequently appealed to the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the director and the AAO shall be affirmed.

The petitioner is a native and citizen of Peru who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

According to the evidence on the record, the petitioner was placed in removal proceedings on October 20, 1995 and he subsequently wed a lawful permanent resident July 1, 1996 in New York City. On April 10, 2002, 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 permanent resident spouse during their marriage.

In a request for additional evidence (RFE) dated September 17, 2002, and in a notice of intent to deny (NOID) dated January 7, 2003, the director informed the petitioner that he had failed to establish that had been battered by, or had been the subject of extreme cruelty perpetrated by, his spouse, and that he is a person of good moral character. The director requested that the petitioner submit additional information to clarify a statement he had made in an affidavit about being arrested for rape. In response, the petitioner merely resubmitted evidence that he had previously provided to Citizenship and Immigration Services (CIS), but did not submit the requested information. The director denied the petition in a decision dated April 3, 2003, finding that the petitioner had failed to establish that he is a person of good moral character.

The petitioner appealed the director's denial of his petition. On appeal, the petitioner submitted affidavits from four friends attesting to his good moral character, a copy of a good conduct certificate from the New York City Police Department dated April 30, 2003, and a copy of a Unified Court System Criminal Search dated April 29, 2003.

The AAO dismissed the appeal, finding that the "search status" for this history search . . . is not reflected on the form." This portion of the AAO decision shall be withdrawn. On review, the search history clearly indicates that no results were found. The AAO dismissed the appeal, in part, finding that although the petitioner claimed that he had been arrested for charges of "sexual abuse," and for failure to appear in court, he failed to submit the arrest reports for these two incidents. The AAO further found that the petitioner failed to submit the final disposition from the court where the charges for sexual abuse and failure to appear were heard.

On motion, the petitioner asserts that he and his attorneys did not receive an RFE dated July 7, 2003. In its decision, the AAO erroneously mentioned a July 7, 2003 RFE. This portion of the decision shall be withdrawn. The director issued an RFE on September 17, 2002 and a NOID on January 7, 2003. The petitioner responded to both the RFE and the NOID but failed to submit police clearances until on appeal to the AAO.

In an affidavit dated October 16, 2002, the petitioner stated "the police came to arrest me at my job; they told me that my wife had accused me of rape."

In a NOID, the director noted that the petitioner had indicated that he had been arrested and that he had failed to submit evidence to show under what charge he was arrested and the final disposition of the charge.

In response to the NOID, in an affidavit dated March 24, 2003, the petitioner stated that in August of 1996 his wife went to the precinct to charge him of "sexual abuse" and that the police arrested him, he saw a judge, was released on parole and was ordered to attend a domestic abuse program. He further indicated that reappeared in court several times as he had difficulty finding a free domestic abuse program and in "March of 1999 . . . the police arrested me for not showing up in court" and that the judge closed his case.

On motion, counsel for the petitioner asserts that the reason final dispositions were not submitted is because "there is *no record* of these arrests." (Emphasis in the original). Counsel's argument is not persuasive. The police arrested the petitioner twice, he appeared in court on at least two occasions, and attended at least one domestic abuse program. The petitioner also indicated that he was placed on parole. Nevertheless, he did not submit arrest records or a police report from the arresting police department; a final disposition from the court of record showing that he was convicted, that "the judge closed the case," that charges were dismissed, or that he was placed on parole or placed in domestic abuse program; or evidence from the domestic abuse program showing that he successfully completed the course of treatment or therapy that he claims the court ordered him to attend. It is noted that in his affidavit dated October 16, 2002, the petitioner stated "I smacked [my wife] so hard that she fell back." The evidence is insufficient to establish that the petitioner is a person of good moral character.

The petitioner's motion has caused the AAO to reopen and reexamine the record. Accordingly, it is further noted, beyond the previous decisions, that the petitioner has not established that he was battered or the subject of extreme cruelty perpetrated by his spouse.

Section 204(a)(1)(B)(ii) of the Act, parallel cite, provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States, 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)(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).

Because the petitioner furnished insufficient evidence to establish that he has been abused by, or the subject of extreme cruelty perpetrated by his spouse, the director asked him to submit additional evidence in an RFE dated September 17, 2002. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. In a NOID dated January 7, 2003, the director informed the petitioner of his intent to deny the petition, in part, due to insufficient evidence of battery or extreme cruelty.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his RFE and NOID. 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 lawful permanent resident spouse. The evidence consists of the following:

- A copy of a police incident report dated May 31, 1997 that indicates that the petitioner called the police, told the police that his wife became upset with him due to interference from his family, and that she began yelling at him and wrecking the apartment.
- A partial copy of the petitioner's petition in family court. The signature is missing from the copy submitted to CIS so this cannot be given any weight.
- An affidavit of a friend named [REDACTED] stating that the police visited the petitioner and his wife's home "constantly."
- An affidavit written by [REDACTED] the petitioner's aunt, that states that the petitioner and his wife "never had any stability and the cops were always involved with them. [The petitioner] was always saying that [his wife] was unbearable and she would humiliate him by making him to sleep on the floor like he was a dog, just so she wouldn't scream."
- The petitioner's statement dated October 16, 2002, in which he wrote:

There was an occasion when the baby was two months old, she created a problem and insulted me. She screamed at me. . . . [T]he baby was starting to fall asleep and out of nowhere my hysterical wife screamed right in the baby's ears telling her to shut up, the baby jumped she was so frightened she started to cry again. I could not take it anymore and as a result of an impulse I smacked her so hard that she fell back, it was the first time I had ever laid my hand on that woman. In that same occasion I took the baby away from her giving the baby my protection, she was so furious that she started ripping my shirt, scratching me and screaming.

Several of the affiants indicate that the police were frequently called to quell domestic disputes, however, the petitioner failed to submit more than one police incident report. In the absence of contemporaneous

corroboration, the allegations of abuse are not established. The alleged abuse does not rise to the level of abuse or extreme cruelty as defined in the regulations. Not all domestic disputes may be categorized as abuse or extreme cruelty.

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 sustained that burden. Accordingly, the previous decisions of the director and the AAO will not be disturbed.

ORDER: The prior decisions of the director and the AAO are affirmed, and the petition remains denied.