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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B9



FILE: [Redacted]
EAC 03 148 54031

Office: VERMONT SERVICE CENTER

Date: MAY 10 2005

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:

SELF-REPRESENTED

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.

for 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 appeal will be dismissed.

The petitioner is a native and citizen of Mexico 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.¹

The director denied the petition, finding that the petitioner failed to establish that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse and that she entered into the marriage in good faith.

The petitioner files 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;

¹ The regulation at 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented “by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter.” In this case, the person listed on the Form G-28 is not an authorized representative.

(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.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on March 25, 1995 in Aguascalientes, Mexico. At the time of their marriage, the petitioner was 20 years old and her citizen husband was 21 years old. The petitioner claims she lived with her citizen spouse from 1995 until 2001. The instant petition was filed on April 14, 2003, with 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 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 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 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) also requires the petitioner to show that she entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she has been battered by or subjected to extreme mental cruelty committed by her citizen spouse and that she married her husband in good faith, she was requested on March 31, 2004 to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty and that she married her spouse in good faith.

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.

On appeal, the petitioner submits copies of photographs in addition to copies of documents previously submitted into the record.

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 statements.
- A statement from [REDACTED] dated December 27, 2002 who acknowledges that she has only known the petitioner since her separation from her citizen spouse.

The petitioner stated that her husband was "very distant," and "always took away my rights [because] he and his brother had all the rights because they paid for all the household expenses." The petitioner indicates that his "indifference toward [her] was shameless and blatant," and that "he used to make [her] feel really bad about [herself]."

The evidence is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her citizen husband. The conduct she describes does not rise to the level of "extreme cruelty."

Further, the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). The evidence in the record relating to the issues of joint residence and a bona fide marriage consists of the following:

- Undated uncaptioned photographs of the petitioner and her spouse.
- The petitioner's marriage certificate.
- Several receipts and bills naming the petitioner, her spouse, and daughter.
- A lease for an apartment in Arlington, TX from November 30, 1998 through November 30, 1999 including the petitioner, her spouse, and daughter.

In review, the evidence is insufficient to establish the bona fides of the marriage or that the petitioner entered into the marriage in good faith.

The petitioner failed to submit insurance policies in which she or her spouse is named as the beneficiary. She failed to submit bank statements, tax records and other documents that show she shared accounts and other responsibilities with her spouse. She failed to submit evidence of joint ownership of property. Although the petitioner claims that her daughter is the product of the relationship between she and her citizen spouse, despite a specific request from the director for a copy of the child's birth certificate, the petitioner has not submitted evidence to show that her spouse is the father of her daughter. The affidavits provided contain scant information about the petitioner and her husband's courtship and married life. The record has not established a commingling of funds and assets or joint financial liabilities, or other objective evidence to indicate that the petitioner and her husband intended to establish a life together.

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.