



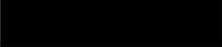
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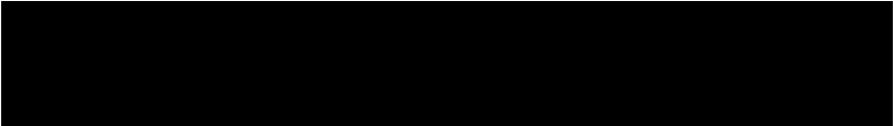
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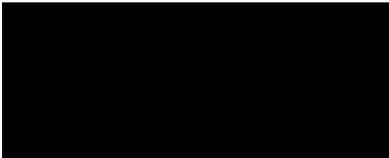
Office: VERMONT SERVICE CENTER

Date: NOV 03 2005

IN RE: Petitioner: 

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 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 the Dominican Republic 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 she has been battered by or the subject of extreme cruelty perpetrated by her citizen spouse.

The petitioner 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 citizen 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 [Secretary of Homeland Security] 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.

According to the information contained in the record, the petitioner wed United States citizen [REDACTED] on September 26, 1997 in the Bronx, New York. On November 3, 1997, the petitioner's spouse filed a Form I-130 in the petitioner's behalf. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 petition and the Form I-485 Application were both denied on January 10, 2001 because the petitioner and her spouse failed to appear for an interview before the Service.

On November 24, 2003, the petitioner filed the instant 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, her citizen spouse during their marriage. The petition was denied on February 9, 2005.

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).

To support a claim of battery and/or that she had been subjected to extreme cruelty, at the time of filing the petitioner submitted a letter dated May 13, 2003 from [REDACTED]. In his letter, [REDACTED] indicates that the petitioner has been under his "psychiatric care and treatment since 2000." [REDACTED] then states that he has diagnosed the petitioner as having "memory lapses, anxiety, depression [and] insomnia." There is no indication in [REDACTED] letter that the petitioner is under treatment for any condition related to physical, psychological or emotional abuse.

On August 16, 2004, the petitioner submitted a second letter from [REDACTED] dated July 20, 2004. In this second letter [REDACTED] diagnoses the petitioner with "anxiety, depression, memory lapses, [and] migraine headaches." Again, however, [REDACTED] does not indicate that any of these conditions are the result of or related to the petitioner's claim that she was battered by or subjected to extreme cruelty by her spouse.

On September 1, 2004, as it relates to the petitioner's claim of abuse, the director specifically requested the petitioner to submit:

- Reports and affidavits from: police; judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that you have sought refuge in a shelter for the abused.
- Photographs of your injuries, and affidavits from witnesses, if possible.
- A statement, in your own words describing the relationship with your abuser. Be as specific and detailed as possible.

The director also noted that if the petitioner was claiming extreme cruelty, her statement should describe the type of abuse suffered (i.e., verbal, social isolation, possessiveness) and should provide details about the after-effects of the abuse, such as the change in quality of life or ability to function. The director indicated that the petitioner could submit affidavits or psychological reports from third parties to corroborate her claims and stated that an evaluation from a counselor or psychologist should contain the following information:

- The number of individual sessions you have attended.
- The number of group sessions you have attended.
- The duration of each session.
- The dates of each session.
- The topics discussed.
- The purpose of any medication(s) you have been prescribed.
- An evaluation of your progress.
- An opinion on future counseling needs.

In his request, the director also noted that pursuant to 8 C.F.R. § 204.1(h), the petitioner had 60 days in which to present additional evidence, to withdraw the petition, to request a decision based upon the evidence submitted, or to request additional time to respond. The director noted that an "additional 60 days may be authorized [but] the total time shall not exceed 120 days" and specifically indicated that if a response is not received within these time limits, a decision will be rendered based on the evidence previously submitted.

On October 29, 2004, the petitioner, through counsel submitted evidence related to her good moral character, but requested additional time to submit further documentation. The director granted the request for additional time in a notice dated November 19, 2004. On January 15, 2005, counsel for the petitioner again requested additional time. No further evidence was submitted.

The director denied the petition on February 9, 2005, indicating that counsel's second request for an extension was denied and that a decision was being rendered on the evidence previously submitted. In denying the petition, the director reviewed and discussed the evidence submitted by the petitioner to establish a claim of battery and/or extreme cruelty. The decision will not be repeated here.

On appeal, the petitioner submits a statement and a third letter from [REDACTED]. In her statement on appeal, the petitioner claims that the director "failed to give adequate weight to the medical evidence presented." We are not persuaded by the petitioner's statement or the letter from [REDACTED]. As discussed previously, neither of [REDACTED] letters give any indication that the petitioner sought treatment related to the alleged abuse or that her conditions were in any way related to battery or extreme cruelty. Accordingly, the fact that the director applied minimal weight and evidentiary value to [REDACTED] letters was not unreasonable or inappropriate.

The letter from [REDACTED] submitted on appeal, simply states "marital abuse by husband" and "post traumatic stress disorder . . . marital abuse and cruelty by her husband." [REDACTED] does not provide any details about the petitioner's claims, descriptions of the alleged abuse or specifics related to how he determined the petitioner was subjected to "marital abuse and cruelty." We note that in the two letters previously submitted by [REDACTED] indicating his treatment of the petitioner since 2000, [REDACTED] does not provide any diagnosis of "post traumatic stress disorder." Regardless, 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 Obaighena*, 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 consider the sufficiency of the evidence submitted on appeal.

As discussed above, the evidence submitted by the petitioner's doctor is insufficient to support her claim of battery or extreme cruelty. We further note the absence of any statement by the petitioner and/or third-party affidavits describing the abuse purportedly suffered, such as whether the abuse was physical or psychological or both, or any details about specific incidents of abuse.

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.