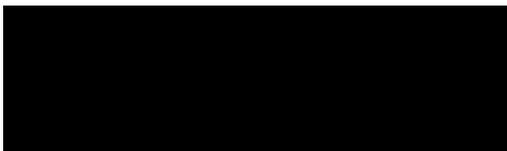


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B9

FILE: [REDACTED]  
EAC 04 022 51953

Office: VERMONT SERVICE CENTER

Date: NOV 03 2005

IN RE: Petitioner: [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.

*Mari Johnson*

S Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center Director denied the preference visa petition and 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 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 had failed to establish that she had been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On appeal, the petitioner states that she is appealing the director's decision because she has been "extremely affected" by her husband's treatment. She further states that she is currently in counseling and taking medication due to her husband's abuse. She provides no additional evidence.

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 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.

According to the evidence on the record, the petitioner wed U.S. citizen [REDACTED] on March 24, 1997 in the Dominican Republic. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on April 10, 1997. The district director approved the Form I-130 petition on June 9, 1997. The petitioner and her spouse subsequently filed a Form I-751 joint petition to remove conditions on residence on October 25, 2000. On August 6, 2003, the petitioner appeared for a scheduled interview in connection with the Form I-751 petition and testified that her husband abandoned her in March 2003. The district director denied the Form I-751 petition. The petitioner was placed in removal proceedings and an immigration judge terminated proceedings on October 15, 2003 because the notice to appear was unintelligible. On October 28, 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 spouse during their marriage.

At 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 spouse. 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).

Because the petitioner furnished insufficient evidence to establish that she has been battered by, or the subject of extreme cruelty by her U.S. citizen spouse, the director requested that she submit additional evidence on August 11, 2004.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including the evidence furnished in response to his request for additional evidence. The discussion will not be repeated here.

The evidence relating to the abuse is as follows:

- An affidavit from a friend, [REDACTED] dated September 30, 2003, that states that the petitioner's husband left the petitioner and that the petitioner does not know her husband's whereabouts.
- Two additional affidavits identical to [REDACTED] 2003 affidavit, stating that the petitioner and her husband separated, that he left and that the petitioner does not know his whereabouts.

- An affidavit of [REDACTED] dated October 12, 2004, stating that due to the petitioner's husband's behavior and other issues, the petitioner and her husband are no longer together.
- An affidavit from [REDACTED] dated October 12, 2004, that is identical to [REDACTED] October 12, 2004 affidavit.
- The petitioner's statement dated November 10, 2004, in which she states that she experienced "lots of verbal and emotional abuse" from her husband. She wrote that her husband was a drug user, and called her names in front of other people.

On appeal, the petitioner asserts that she has been "extremely affected" by her husband's treatment and that she is currently in counseling and taking medication due to the abuse.

The director determined, and the AAO concurs, that the treatment described does not rise to the level of "extreme cruelty." Abandonment does not rise to the level of abuse. The harm complained of does not rise to the level described in the pertinent regulations. The petitioner failed to provide sufficient detail about the "verbal and emotional abuse" she endured to establish that it rises to the level of "extreme cruelty." It is noted that the petitioner failed to submit corroborating evidence to establish that she is in counseling and taking medication as a direct result of the 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.