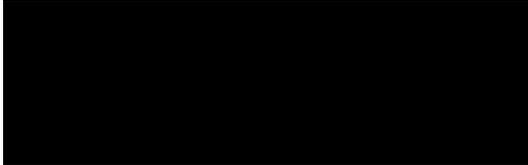


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FILE: [REDACTED]
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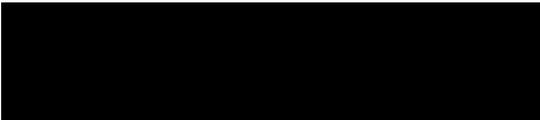
Office: VERMONT SERVICE CENTER

Date: NOV 07 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:



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 Slovakia 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 he has been battered by or the subject of extreme cruelty perpetrated by his 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 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 October 4, 2000 in Texas. On April 10, 2001, 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 denied on January 2, 2003 due to abandonment. The beneficiary was placed in removal proceedings on May 14, 2003.

On January 8, 2004, 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, his citizen spouse during their marriage. The petition was denied on February 23, 2005.

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 his claim of abuse, at the time of filing the petitioner submitted an unsigned, unsworn statement as well as a statement from Courtney Faubian, an acquaintance who shared the apartment with the petitioner and his spouse.

The director found this evidence to be insufficient and on October 26, 2004, requested the petitioner to submit further documentation to support his claim of abuse and extreme cruelty. The director noted that a finding of extreme cruelty involves an "examination of the dynamics of the relationship, the victim's sense of well-being before the abuse, [and] the specific acts during the period of abuse," such as whether the petitioner was verbally abused or socially isolated, and whether the victim's quality of life and ability to function changed after the abuse.

The petitioner responded to the director's request on December 30, 2004. As it relates to the director's request regarding evidence of the claimed abuse and extreme cruelty, the petitioner resubmitted his previous statement and the statement made by Ms. [REDACTED]. With the exception of that fact that the petitioner's statement is signed and the Ms. [REDACTED] statement was signed under the penalty of perjury, the statements submitted in response to

the director's request are identical to the statements previously submitted. No further details or specific information was provided to support the petitioner's claim of abuse.

Accordingly, the director denied the petition on February 23, 2005, finding that the petitioner had failed to establish his claim of battery and extreme cruelty.

On appeal, counsel for the petitioner claims that the petitioner has demonstrated that his spouse "engaged in a continuing cycle of abuse." As there is no other documentary evidence regarding the claimed abuse and extreme cruelty, counsel appears to base his statement regarding the "continuing cycle of abuse" upon the petitioner's unsworn statement and the affidavit provided by Ms. [REDACTED]

In his letter the petitioner clearly distinguishes between incidents that occurred before his marriage and incidents that occurred after the marriage. This fact is important because although the petitioner describes incidents that occurred prior to his marriage, to include a claim that his spouse would hit him while he was sleeping and that on one occasion his spouse "hit [him] three times [in his] chest," the regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) indicates that the claimed abuse must have been perpetrated by the spouse *during the marriage*. The incidents described by the petitioner as occurring after the marriage include allegations that:

- His spouse took money from him.
- His spouse abused alcohol and drugs.
- One night his spouse yelled at him and wanted to kick him out of the apartment.
- His spouse had an affair with another man.

In her statement, Ms. [REDACTED] states that the petitioner's spouse's "drinking was out of control," and that she would take the petitioner's money to spend on drugs and other men. Ms. [REDACTED] statement does not describe any instances of battery or specific details regarding the petitioner's claim of extreme cruelty such as how the petitioner's spouse "wallow[ed] in the power she thought she had over [the petitioner]." The fact that the petitioner's spouse may have abused drugs or alcohol or that she had an affair during their marriage, does not establish a claim of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which 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

In this instance, the petitioner has failed to demonstrate that the treatment he received by his spouse during the marriage involved any overall pattern of violence, any act or threatened act of violence, or forceful detention, psychological or sexual abuse or exploitation.

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.