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**U.S. Citizenship
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FILE:



EAC 03 203 50853

Office: VERMONT SERVICE CENTER

Date: NOV 10 2005

IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Battered Child pursuant to 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

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.

for
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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 19-year old native and citizen of South Korea who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iv), 8 U.S.C. § 1154(a)(1)(A)(iv), as the battered child of a United States citizen.

According to the evidence contained in the record, the petitioner's father wed United States citizen Claudine Chong in Las Vegas, Nevada on May 17, 1999. The instant self-petition was filed by the petitioner on June 30, 2003. The petition was denied on February 28, 2005.

The petitioner, through counsel, submits a timely appeal dated March 21, 2005.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that the child of 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, 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(e)(1)(i) states, in pertinent part, that:

A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:

(A) Is the child 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;

* * *

(D) Has resided . . . with the citizen or lawful permanent resident parent;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;

(F) Is a person of good moral character; and

* * *

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.

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).

With the initial filing, the petitioner submitted a copy of her passport and Form I-94, Arrival and Departure Record, and a copy of the petition for dissolution for her father's marriage. The director found this evidence was not sufficient to establish eligibility. Accordingly, on June 9, 2004, the director requested the petitioner to submit additional evidence to support her claim that she resided with her citizen stepparent, that she was battered by or subjected to extreme cruelty by her citizen stepparent, and that she is a person of good moral character.

To support her claim that she resided with her citizen stepparent, the director requested school, hospital, or medical records, insurance policies, banking or other financial records, or photocopies of income taxes which list the petitioner as a dependent.

To support her claim of abuse, the director requested reports and affidavits from police, judges, court officials, medical personnel, school officials, etc., evidence that the petitioner sought refuge in a shelter for

the abused, photographs of injuries, or a statement describing how the petitioner's life was affected by the abuse, the type of abuse suffered, such as whether it was physical or verbal, and whether the petitioner's stepparent was possessive or socially isolated the petitioner.

Finally, to support her claim of good moral character, the director requested an affidavit from the petitioner, supported by police clearances from each place the petitioner lived for at least six months during the past three years.

On July 30, 2004, the petitioner responded to the director's request by submitting a psychological evaluation, letters from the petitioner, her father, and an attorney, an insurance policy, and copies of her father's joint tax returns for 2000, 2001, and 2002. The petitioner, through counsel, also requested an extension of time in order to submit additional documentation. On September 9, 2004, the director granted the petitioner's request for additional time.

The petitioner submitted no further documentation and the director denied the petition, finding that the petitioner failed to establish that she resided with her citizen stepparent, that she has been battered by or subjected to extreme cruelty by her citizen stepparent, and that she is a person of good moral character.

On appeal, counsel for the petitioner indicates that a brief and/or evidence would be submitted to the AAO within 30 days. To date, more than seven months after the filing of the appeal, the record contains no further submission from the petitioner. We, therefore, consider the record to be complete as it now stands.¹

On the Form I-290B, the petitioner states:

- I have lived in USA since July 1999.
- My stepmom battered me for 18 months stay.
- I am 18 years old with good character.
- I would suffer extreme hardship if I am deported now.

The petitioner submits a statement regarding the extreme hardship she will suffer if removed from the United States. We note, however, that the issue of extreme hardship is no longer a consideration in the Form I-360 determination; accordingly, we will not address it on appeal.²

¹ We note that in instances where 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. 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. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Therefore, even if the petitioner had submitted additional evidence on appeal, the AAO need not and would not consider the sufficiency of the evidence.

² On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

The issues to be considered on appeal are whether the petitioner has submitted sufficient documentation to establish that she has been abused, whether she resided with her citizen stepparent and whether she is a person of good moral character.

As it relates to her claim of abuse, the record contains the petitioner's letter, her father's letter, and a psychological evaluation. We note that the psychological evaluation submitted by the petitioner is based upon an interview with the petitioner's father, not the petitioner. Accordingly, the evaluation has little probative value in the determination of the petitioner's claim of abuse. In her unsworn statement, the petitioner claims that she endured "extreme mental abuse" when she stayed at her father's and stepmother's home each summer. The petitioner states that her stepmother would stare at her with a "scary, creepy glare," that her stepmother would "constantly call" her father when the petitioner was spending time with him, that her stepmother would "swear and be mad" and that her stepmother would get mad if her father gave the petitioner money. The petitioner's father indicates that his spouse did not like him spending time with the petitioner and that she would ruin their "quality time together." However, the fact that the petitioner's mother would "bang the dishes," "be mad," or "glare" at the petitioner does not establish a claim of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The record contains no evidence related to the petitioner's good moral character. We note that although the petitioner has submitted a letter from Jina Kim, an attorney, who states, "pursuant to our recent investigation with the West Justice Center . . . there is no case pending in the West Justice Center or any other courts against you," the letter is addressed to the petitioner's father. Further, even if the "investigation" indicated that it was related to the petitioner rather than her father, the letter from the West Justice Center cannot take the place of a police clearance from a local, state or federal law enforcement agency.

Finally, as it relates to the issue of whether the petitioner resided with her stepmother, as noted previously, the petitioner indicates that she resided with her stepmother during the summer months. Although the record contains copies of the petitioner's father's joint tax returns, which list the petitioner as a dependent, we do not find such evidence to be conclusive evidence of the petitioner's residence with her stepmother. Specifically, because the Internal Revenue Service (IRS) allows a person to claim a child as a dependent either because the child lives with the parent for the entire year *or simply because of the parent-child relationship*,³ the submission of the tax returns is not conclusive evidence that the petitioner resided with her stepmother. Therefore, without other supporting documentation to corroborate the petitioner's claim, we find the record is not sufficient to establish that the petitioner resided with her stepparent.

As discussed above, the petitioner has failed to establish that he was battered by his spouse or subjected to extreme cruelty and that he is a person of good moral character. 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

³ See IRS Publication 504, *Divorced or Separated Individuals*.