

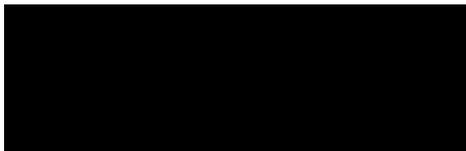
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U.S. Citizenship  
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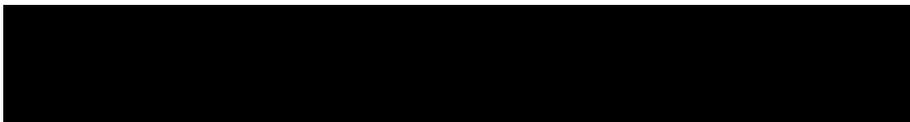
EAC 04 063 51092

Office: VERMONT SERVICE CENTER

Date: NOV 10 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Jamaica 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, 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 July 12, 2002 in Jamaica. On August 23, 2002, 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 October 16, 2003.

On December 30, 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 7, 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).

As it relates to her claim of battery and/or that she had been subjected to extreme cruelty, at the time of filing, the petitioner submitted an unsworn statement and an incident report dated March 10, 2003. In her statement, the

petitioner states, “[e]verything was basically fine in the relationship until my money was finishing,” and that “[t]he end of the money marked the beginning of the troubles.” The petitioner claims that her spouse treated her children with “disrespect” and that on one occasion he “strongly objected” to the petitioner’s job as a volunteer. The petitioner describes one other incident in which she called the police because of a disagreement she had with her spouse over their crowded living arrangements. The petitioner submits a copy of the incident report related to this disagreement which indicates that the petitioner told the police that her spouse was “making it difficult for her children to live in the apartment,” and that although the petitioner’s spouse “never touched or threatened the children,” and “she wasn’t afraid that [her spouse] would physically harm her,” the petitioner wanted the incident documented.

The director found this evidence to be insufficient to support a claim of abuse and on September 9, 2004, requested the petitioner to submit further documentation, to include:

- Additional 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.

The director also noted that if the petitioner’s claim of abuse is based upon 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.

The petitioner, through counsel, responded to the director’s request on September 28, 2004, by requesting a 60-day extension of time. On November 8, 2004, the petitioner submitted a second statement, and letters from the petitioner’s doctor, reverend, and divorce care facilitator. In her second statement, the petitioner claims that she “suffered severe emotional, mental abuse and sexual abuse at the hands” of her spouse. The petitioner’s claims appear to be based upon the allegation that her spouse “threatened to divorce [her] numerous times,” that he did not file immigration papers for her children, that he was “very controlling,” and “attempted to manipulate the spending of [the petitioner’s] own money,” and that her spouse forced the petitioner to have sex “even if [she] didn’t want to have sex.” The petitioner states that she has “learned to block out hurtful situations” as a result of being raped when she was twenty years old.

The letter from Dr. [REDACTED] dated October 6, 2004, indicates that the petitioner “has been suffering mental anguish and sought counseling as a result of the possibility of disease” that may have been transmitted to her because of her husband’s alleged infidelity.

The letter from Reverend [REDACTED] indicates that the petitioner sought counseling in order to reconcile her marriage. [REDACTED] states that the petitioner "expressed the concern that her husband would not communicate with her, and was always yelling and threatening to divorce her."

The letter from [REDACTED] Divorce Care Facilitator, indicates that the petitioner was "deeply distressed over the pending divorce that her husband initiated" and that as a result of the divorce, the petitioner was subjected to "enormous emotional pain and distress."

Although the letters submitted by the petitioner indicate that the petitioner suffered due to her pending divorce and her husband's alleged infidelity, none of the letters support the petitioner's claim that she "suffered severe emotional, mental abuse and sexual abuse at the hands" of her spouse.

On January 4, 2005, the petitioner submitted a letter from Reverend [REDACTED] dated December 15, 2004, which states that the petitioner:

[H]as recently seen me for several sessions of counseling. From her description of events in her life during the past two years and the way she talks about those events, it is evident to me that she married in Jamaica and came to the United States on the basis of false promises and expectations. I believe that she was highly vulnerable at the time of her marriage, such that her husband was able to manipulate and exploit her, finally to abandon and divorce her when he saw no further financial advantage to himself by continuing the marriage. I believe that his treatment of her was so egregious as to constitute abuse.

While Reverend [REDACTED] claims the petitioner's spouse manipulated and exploited the petitioner, he does not describe any specific incidents upon which he bases his claim. It appears that his conclusion of "egregious" conduct which constitutes abuse is based upon the petitioner's spouse's "false promises" and "abandonment" of the petitioner.

The director reviewed and discussed the evidence submitted by the petitioner and denied the petitioner based upon the determination that the evidence submitted was not sufficient to establish her claim that she had been battered by her spouse or subjected to extreme cruelty.

On appeal, counsel for the petitioner claims that it was only recently that the petitioner began to disclose the sexual abuse she endured during her marriage. To support his statement, counsel submits, "newly presented evidence" of the petitioner's sexual abuse, to include, a new statement from the petitioner, additional letters from Reverend [REDACTED] and information related to posttraumatic stress disorder (PTSD).

In the petitioner's letter on appeal, she claims that "until now [she has] not been able to talk in great detail about the sexual abuse suffered." In the letter submitted by Reverend [REDACTED] dated February 10, 2005, Reverend [REDACTED] references the petitioner's "five sessions of counseling between November 18 and December 15, 2004." Reverend [REDACTED] concludes that the petitioner "suffered far more serious abuse during her marriage that she was willing to describe to me with much detail. The Reverend does not indicate when or why he came to the conclusion that the alleged abuse was "far more serious" as it is not clear that he had any more sessions with the petitioner after December 15, 2004. Regardless, while Reverend [REDACTED] letter refers to the petitioner's rape in college and the abuse she was subjected to during her first marriage, Reverend [REDACTED] diagnosis of PTSD does not establish that the PTSD is related to any abuse suffered by the petitioner during her marriage to her citizen spouse.

In a letter dated March 4, 2005, Reverend [REDACTED] indicates that he has had two additional sessions and one "emergency telephone conversation" with the petitioner. In this letter, Reverend Beveridge states:

In the case of her marriage to [REDACTED] [the petitioner] was warned against that marriage by at least one friend and, indeed, can recall some warning signs that she, herself, saw. But she was in such a vulnerable state that she not only consented to marry him but submitted to his abuse repeatedly. She has told me (and I believe her) that he knew very well that forcing her to have sex with him came under conditions in which that was against her will. She says that she had well-founded reason to believe that he was having sex with other women, that, out of fear of HIV infection she asked him to use condoms when he was with her, and that he refused to use condoms.

Add to that the fact that he used up what economic resources she brought to the marriage and then placed her in a legal limbo by divorcing her, and it is quite clear to me that his treatment of her constitutes serious manipulation and abuse.

We do not find the petitioner's appellate submission is sufficient to warrant overturning the director's determination. We note that in the petitioner's initial statement, the petitioner makes no claim regarding sexual abuse. Rather, her claim is founded on the fact that her spouse had bad credit and was in debt, and that he treated her children with disrespect. In fact, the record contains the petitioner's statement to police that her spouse would not physically harm her.

The petitioner's claim of sexual abuse arises for the first time in the letter she submitted in response to the director's request for evidence. We find it notable, however, that although the petitioner raises the issue in her response to the director, the other letters submitted by the petitioner at that time make no mention of the alleged sexual abuse. Instead, the letters refer to the petitioner's "mental anguish . . . as a result of the possibility of [contracting a sexually transmitted] disease" and her distress "over the pending divorce that her husband initiated."

More importantly, in the first letter submitted by Reverend [REDACTED] also after the director's request for evidence, Reverend [REDACTED] does not mention the petitioner's claimed sexual abuse. Rather, Reverend [REDACTED] notes that the petitioner was financially manipulated and exploited. Although counsel claims on appeal that it was "only recently" that the petitioner could discuss her sexual abuse, the record reflects that the petitioner detailed her sexual abuse claims against her spouse in her statement dated November 5, 2004, less than two weeks prior to her first counseling session with Reverend [REDACTED]. While counsel attempts to make it appear that the sexual abuse was not out in the open until the petitioner's sessions with Reverend [REDACTED] after the director's denial, the record shows differently. Accordingly, we are not persuaded by counsel's argument and find the petitioner has not adequately or credibly documented a claim of sexual abuse.

The petitioner's remaining claims of abuse, that her spouse was controlling, disrespectful to her children, and used the petitioner for her money, eventually abandoning her by divorcing her after the money was gone, do not establish that the petitioner was subjected to extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

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.