



U.S. Citizenship
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FILE: [REDACTED]
EAC 03 264 52935

Office: VERMONT SERVICE CENTER

Date: NOV 14 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.

Maui Johnson

 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 Philippines who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if he or she demonstrates that the alien's marriage to the United States citizen was entered into in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by his or her spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

In this case, the petitioner filed her Form I-360 on May 27, 2003 and submitted supporting documents including evidence of her marriage to [REDACTED] and the birth of their child; copies of their joint bank account statements and checks; a Preliminary Investigation report from the Los Angeles Police Department; a letter from the petitioner's friend; photographs of the petitioner, [REDACTED] and their child; and documents concerning child support and divorce proceedings. On July 30, 2004, the director issued a Request for Evidence (RFE) asking the petitioner to submit evidence of her good moral character and evidence that [REDACTED] had subjected her or her child to battery or extreme cruelty. The petitioner timely filed a response to the RFE including a clear criminal record check from the California Department of Justice based on the petitioner's fingerprints; a Police Clearance Certificate from the National Police Commission of the Philippines; the petitioner's own affidavit; three letters from the petitioner's relatives, friends, and former apartment manager; and copies of documents previously submitted. The director determined that the petitioner had met all the statutory requirements except for being subjected to battery or extreme cruelty by her U.S. citizen spouse during their marriage. On appeal, counsel submits a brief but no additional evidence. As discussed below, counsel's contentions do not overcome the deficiencies of the petition and the appeal will be dismissed.

The sole issue on appeal is whether [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage. Section 204(a)(1)(A)(iii)(I)(bb) of the Act requires the petitioner to show that "during the marriage . . . the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse." 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb). The corresponding 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, including rape, molestation, incest (if the victim is a minor), or forced prostitution 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 . . ., must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The applicable evidentiary standards are described in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

....

(iv) *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 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.

On appeal, counsel contends that the director did not consider and properly evaluate the petitioner's alleged battery and subjection to mental cruelty by her husband as stated in her affidavit. Although the petitioner describes several instances of her husband's mistreatment, her statements are not fully corroborated by primary or other relevant, credible evidence in the record. In her affidavit, the petitioner states that in her second month of pregnancy in August 2001, her doctor told her it would be better for her to rest until the sixth month of her pregnancy. The petitioner states, [REDACTED] and I agreed on the idea and I quit my job in Coral Diamonds. After quitting, I was getting negative statements from [REDACTED]. He'll call me lazy, stupid." The petitioner states that her husband pressured her to go back to work even though she "was throwing up a lot and could not take food in for 5 months." The petitioner explains that when she was six months pregnant, she decided to work part-time because her "husband would be very happy." During the last three months of her pregnancy, the petitioner states, "he would let me carry heavy grocery bags from the basement parking taking the stairs to our apartment." Soon after their child was born, the petitioner states that [REDACTED] "wouldn't even check on his son when he came home at night" and would give her "[a] hard time about doing grocery shopping. He would always say 'I'm very tired. You can do that with [REDACTED] in his stroller.' He never considered the fact that [REDACTED] is only in his early months and the store is about 6 blocks away from us."

Counsel contends that these statements demonstrate extreme mental cruelty. While the petitioner's statements indicate that [REDACTED] mistreated the petitioner during her pregnancy, the record does not corroborate her statements or indicate that this mistreatment rose to the level of extreme cruelty. Although we understand that the petitioner may not have wanted to confide in others about her husband's behavior, none of the submitted letters discuss these incidents or describe the petitioner's physical, mental and emotional health during her pregnancy. The record also contains no copies of the petitioner's medical records noting physical, mental or

emotional conditions (apart from the effects of her pregnancy) that indicate abuse. The record contains no other evidence relevant to these purported events.

In May 2002, the petitioner states that she woke up early in the morning with tight chest pains on three occasions. The second time, she reports waking her husband who refused to take her to the hospital. The third time, the petitioner explains that she woke him up and told him that she was taking a cab to the hospital, but that he would have to care for their son in her absence. The petitioner states, "He got up and started yelling 'I am not taking care of [REDACTED] if that's what you think. You better take him with you 'cause there's no way I'm watching him. I'm tired and still have to work two jobs!'" The petitioner states that she then got their baby ready and took him with her to the hospital. Again, the record does not corroborate these statements. The record contains no copy of the petitioner's medical records from her hospital visit and none of the submitted letters discuss this incident. The petitioner does not state that her medical records are unavailable or explain why she did not obtain or submit them.

In April 2003, the petitioner reports that her husband suddenly told her he was leaving her because she could not accept his two children from his previous marriage. She states that he started screaming obscenities at her and shouted, "[You] cannot accept my kids! I don't love you anymore and I'm divorcing you! Get out of my house 'cause I don't need you here!" The petitioner explains that her husband later told her he would no longer support her and their son. When she realized her husband was having an affair, the petitioner states that she went to see her husband's girlfriend and "pleaded her for mercy." When her husband became aware of this encounter, the petitioner reports he was "fuming mad at me and yelling out so loud that I had to stop him because neighbors could hear us. I was so scared seeing his red face and fist ready to attack me. He grabbed me by my arms and squeezed them tight saying 'You are so dumb not feeling how mad I am already with you and you still don't want to stop. I don't love you anymore and that's not going to change. I regret marrying you and you should've just went home . . . ! When I come back I want you gone.'"

Although these episodes frightened and distressed the petitioner, the record does not document or corroborate these incidents or the severity of [REDACTED] actions and their effect on the petitioner. The petitioner did not submit evidence of any physical injury resulting from this incident or explain why such evidence does not exist or is unobtainable. Although she states that her neighbors could hear her husband yelling, the submitted letter from the petitioner's neighbors does not discuss this incident or report other instances of [REDACTED] yelling at the petitioner. Moreover, while the petitioner reports feeling scared, she states that she was still able make her husband stop yelling.

The petitioner explains that she and her son then went to stay with her cousin and his wife from April 30 to July 10, 2003¹ and that during this time her husband "came with a letter forcing me to sign it saying I left on my own free will." When she refused to sign the document, the petitioner states, "He got so mad and gave me a threatening look to intimidate me. When he saw I was not doing it, he left and called me on his cell phone screaming and practically losing his voice." The petitioner states that [REDACTED] did not support her or their son financially during this time and only sent baby supplies on two occasions. The petitioner explains that she then applied for welfare and filed for child support. The petitioner states, "He got even more upset finding out he was served by the Child Support Department. He began harassing me over the phone and whenever he comes over instructing me to cancel it and settle with him."

¹ The petitioner's affidavit states 2004 as the year of this period, but the submitted letter from the petitioner's cousin and his wife confirm that the petitioner stayed with them in 2003.

The record documents the petitioner's application for public benefits, Section Eight housing, and a child support judgment issued against [REDACTED] for their son. The petitioner also submitted a document entitled "Preliminary Investigation of Annoying Phone Calls" from the Los Angeles Police Department listing the petitioner as the victim, the date of occurrence as July 11, 2003 and the reporting date as August 27, 2003. The first line of the description is illegible and the remaining two lines contain a quotation attributed to the suspect, but the submitted copy of this document does not identify the suspect as the petitioner's husband. The petitioner does not explain the significance of this document in her affidavit.

[REDACTED] the petitioner's relatives, confirm that the petitioner moved to their home on April 29, 2003 and that

[s]he was picked up by [REDACTED] on the same day after being forced to leave by [REDACTED]. She called us to let us know how emotionally and verbally she was already suffering even before this time. She never wanted to reveal the truth at first thinking [REDACTED] might get back on her [sic]. . . . We never witnessed any kind of support from her husband. There was no child support given too.

The petitioner's former neighbors [REDACTED] state that the petitioner

and her son were abandoned by her husband and stopped supporting the child. She was even pressured by [REDACTED] to leave their apartment so he could keep it to himself. She is still verbally and emotionally abused by [REDACTED] because the latter knows she does not know her rights [REDACTED] decided to leave with her son due to mental stress and cruelty by the husband.

The petitioner's friend [REDACTED] states:

I've witnessed her extreme emotional struggles. She is still verbally and emotionally abused by [REDACTED]. She was forced by the husband to move out of their apartment with her son so he can keep it to himself. He abandoned them and never gave child support as well. [REDACTED] gave so much mental stress to [REDACTED] and abused her kindness. He knows [REDACTED] does not know her rights and abused her innocence. Now [REDACTED] and son are unfortunately staying in a storage place renting the second floor as their residence. She cannot financially afford a better apartment now. [REDACTED] overdrawn [sic] her checking account too and never wanted to pay back.

The record contains a largely illegible receipt from Washington Mutual Bank with handwritten notes stating, "overdrawn money by [REDACTED] \$513.10 in May 2003 and paid by [REDACTED] Acct [sic] closed 6/30/03." The petitioner also submitted a copy of her rental agreement with A-American Self Storage dated May 29, 2003, but she does not state in her affidavit that she and her son are living in this storage facility.

While the petitioner's affidavit contains credible descriptions of [REDACTED] mistreatment of her, the petitioner's statements are not sufficiently corroborated by other evidence in the record and do not establish that [REDACTED] mistreatment rose to the level of battery or extreme cruelty. The petitioner does not state that primary evidence of several incidents described in her affidavit is unavailable or explain why she did not obtain such documentation. In addition, the record contains several discrepancies that are not resolved or explained by the petitioner in her affidavit. First, as mentioned above, the petitioner does not explain the significance of the police report concerning annoying phone calls. Second, the petitioner submitted a copy of the petition for

dissolution of marriage filed by [REDACTED] in which he states that the petitioner threatened to take their child with her to the Philippines, demanded that he sign documents to get a passport for their son, and his belief that she would forge his signature after his refusal to sign the documents. The petitioner does not discuss this incident, refute [REDACTED] statements, explain that she needed to return to the Philippines for the well being of herself and her son, or otherwise explain this purported incident in her affidavit. The letters of Mr. and Mrs. [REDACTED] and [REDACTED] and [REDACTED] assert that the petitioner was abused by her husband, but do not relate any specific incidents of abuse that they witnessed or describe in any detail the physical and emotional effects of [REDACTED] mistreatment of the petitioner as directly observed by them.

In review, the record does not establish that the petitioner was battered or subjected to extreme cruelty by her U.S. citizen spouse during their marriage. The petitioner was notified of the deficiencies in her self-petition and of the specific forms and types of acceptable evidence by the director's RFE. The petitioner's affidavit and the other relevant documents submitted in response to the RFE do not demonstrate the petitioner's eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her self-petition must therefore be denied.

We are mindful of the difficulties that the petitioner may have faced in documenting her case and have reviewed all the credible relevant evidence submitted. However, the burden of proof in visa petition 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.