



U.S. Citizenship
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Services

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FILE: [REDACTED]
EAC 04 141 52777

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)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

[REDACTED]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the preference immigrant 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 Haiti who seeks classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien subjected to battery or extreme cruelty by his lawful permanent resident spouse.

The director denied the petition, finding that the petitioner failed to establish that he had been battered or subjected to extreme cruelty by his lawful permanent resident wife during their marriage. On appeal, counsel asserts that “sufficient evidence has in fact been submitted to verify that petitioner has been subject to extreme hardship by his USC spouse.” Counsel makes two errors. First, the extreme hardship provision of the regulation implementing the Violence Against Women Act of 1994 at 8 C.F.R. § 204.2(c)(1)(G) has been superseded by subsequent amendment to section 204(a) of the Act by Public Law 106-386. The issue on appeal is not extreme hardship, but whether or not the petitioner was subjected to battery or extreme cruelty by his wife. Second, the petitioner’s wife is a lawful permanent resident, not a citizen, of the United States. On appeal, counsel also submits a psychiatric evaluation of the petitioner written by [REDACTED] and audiotapes of an argument between the petitioner and his wife. The evidence submitted on appeal does not overcome the deficiencies of the petition and the appeal will be dismissed.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, 8 U.S.C. § 1153(a)(2)(A), resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

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 evidentiary requirements for a self-petition under section 204(a)(1)(B)(ii) of the Act are contained 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.

The record indicates that the petitioner married [REDACTED] a lawful permanent resident of the United States, on October 16, 1996 in Brooklyn, New York. The petitioner's wife filed a Form I-130 petition on his behalf, which was approved on November 18, 1996. The petitioner subsequently filed a Form I-485 application to adjust status, which was denied on July 17, 1999 because the petitioner's priority date was not then current. The petitioner filed a second Form I-485 in 2002. On April 2, 2004, the petitioner's wife withdrew her Form I-130 petition on the petitioner's behalf and on August 25, 2004, Citizenship and Immigration Services (CIS) denied the petitioner's second Form I-485 application due to his wife's withdrawal of the underlying Form I-130 petition. On September 21, 2004, CIS automatically revoked the approval of the Form I-130 petition filed on the petitioner's behalf. The petitioner filed a Form I-360 self-petition on April 8, 2004 claiming eligibility as a special immigrant alien who was battered or subjected to extreme cruelty by his lawful permanent resident wife during their marriage.

On November 4, 2004, the director issued a Request for Evidence (RFE) asking the petitioner to submit, *inter alia*, additional evidence that he had been battered or subjected to extreme cruelty by his wife. In the RFE the director discussed the insufficiency of the evidence previously submitted and listed specific examples of the types of evidence which the petitioner could submit to establish battery or extreme cruelty. The director noted that the petitioner had submitted a copy of his Temporary Order of Protection issued against his wife, but also stated that CIS records showed that a Temporary Order of Protection had been issued against the petitioner for his wife. Hence, the director specifically requested the petitioner to submit copies of all relevant court records. The petitioner did not submit such records.

The record contains conflicting evidence about the nature of the disputes between the petitioner and his wife. A copy of a New York State Domestic Incident Report states that on November 11, 2003 the petitioner's wife changed the locks on their apartment and refused to let him in. The petitioner also submitted a copy of a Temporary Order of Protection for him against his wife issued by the Kings County Family Court of the State of New York on March 26, 2004 and effective through April 24, 2004. Despite the specific request in the RFE, the petitioner did not submit evidence that he attended a subsequent hearing on this Order or obtained a final Order of Protection against his wife. As noted by the director, CIS records show that a Temporary Order of Protection was issued against the petitioner for his wife on June 11, 2004 in New York. The petitioner also submitted a

copy of a summons issued to and served upon the petitioner to appear at the Kings County Family Court of the State of New York on February 23, 2004 in a "Family Offense Proceeding" of which the petitioner was the defendant and his wife the plaintiff.

In his RFE response, the petitioner submitted no evidence to explain these discrepancies or to establish that he was the victim and not the perpetrator of the domestic disputes between him and his wife. Instead, the petitioner submitted an affidavit that he tape-recorded an argument between himself and his wife because they "had many problems. She brought charges against me in both Family Court and Supreme Court of the State of New York."

The petitioner attached a transcript of their argument, the audiotapes of which he has submitted on appeal. During the course of this conversation, the petitioner and his wife argue about money, paying the rent, and opening the window in the room where the petitioner is sleeping. The petitioner accuses his wife of infidelity and states that she hit him. The petitioner's wife accuses him of stealing her lawful permanent resident and social security cards, tells him to get out of the apartment and that he will get beat up by a vagabond on the street. This argument demonstrates significant marital discord, but does not establish that the petitioner was battered by or subjected to extreme cruelty by his wife during their marriage.

In his RFE response, the petitioner also submitted a letter from his friend, [REDACTED] and copies of the petitioner's prescriptions and physician notes from his record at Coney Island Hospital. [REDACTED] describes the petitioner's wife's behavior and some of their domestic disputes, but, as noted by the director, [REDACTED] does not state that he personally witnessed any of these events. The petitioner's physician's notes are largely illegible. The legible portions indicate that the petitioner saw a physician on four occasions from June through December 2004. The notes from the first visit state that the petitioner felt depressed due to his poor relationship with his wife and that he had trouble sleeping, had lost his appetite, was anxious, forgetful and had trouble concentrating. The petitioner was prescribed medication and the notes from his last visit on December 15, 2004 state that the petitioner felt better, slept well, had a good appetite and felt calm and less depressed.

On appeal, the petitioner submits a psychiatric evaluation from [REDACTED] dated March 9, 2005. Dr. [REDACTED] states that the petitioner reported that his wife verbally and physically abused him, and that he feels depressed, withdrawn, helpless, has no appetite, and has trouble sleeping and concentrating. [REDACTED] treatment plan includes continuing the petitioner's medication and therapy. [REDACTED] concludes, "Psychodynamically, [the petitioner's] emotional condition is highly related to family situation/marital conflict/immigration problem." [REDACTED] does not state how long or on how many occasions he met with the petitioner. The record contains no evidence that [REDACTED] has expertise in the diagnosis and treatment of victims of domestic violence and his assessment does not specify or explain how any of the petitioner's symptoms are consistent with those of someone who has been subjected to physical and/or psychological abuse.

In sum, the record indicates that the petitioner has a troubled relationship with his wife and that he has suffered from depression and related problems due, in part, to their problematic marriage. However, not all forms of marital discord rise to the level of battery or extreme cruelty as defined by the regulation. The petitioner has not established that he was the victim and not the perpetrator of the domestic disputes which have resulted in multiple court proceedings between him and his wife. The domestic incident report, [REDACTED] letter, the petitioner's medical records and the psychiatric evaluation submitted on appeal do not establish that the petitioner was subjected to battery or extreme cruelty by his lawful permanent resident wife during their marriage. He is thus ineligible for classification as a special immigrant under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), and his petition must therefore be denied.

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.