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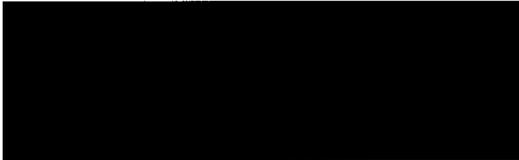
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Room A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 18 2005

EAC 04 154 54140

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:

SELF-REPRESENTED

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*

2 Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center Director 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 Dominican Republic 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.

On March 29, 2005, the director denied the petition, finding that the petitioner failed to establish that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and entered into the marriage to the citizen in good faith.

On appeal, the petitioner asserts that the director should have given greater weight to the evidence in the record.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that 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, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General 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.

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)(ix) states, in part:

*Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] February 24, 1997 in Larchmont, New York. The petitioner’s spouse filed a Form I-130 on the petitioner’s behalf on April 8, 1997. The petitioner filed a Form I-485 concurrently with the Form I-130. On February 26, 2000, the district director denied the Form I-130 petition and the Form I-485 application because the petitioner and her spouse failed to appear for an interview scheduled on April 21, 1999. On April 28, 2004, the petitioner filed a 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 U.S. citizen spouse during their marriage.

The first issue to be addressed in this proceeding is whether the petitioner established that she has been battered by or has been the subject of extreme cruelty perpetrated by her citizen spouse. 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, her U.S. citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that she had been abused by, or the subject of extreme cruelty perpetrated by her citizen spouse, the director asked her to submit additional evidence (RFE) on September 3, 2004 and on December 16, 2004. In the latter RFE, director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. The petitioner responded to the request with additional evidence regarding the abuse.

The evidence relating to abuse consists of the following:

- The petitioner's affidavit dated April 27, 2004 stating that in March 1999, her husband punched her in the face and humiliated her by calling her names in public. She stated that she called the police but that her husband had fled before the police arrived so she did not press charges. The petitioner said that in February 22, 2004, she went to a restaurant alone and her husband threatened to kill her if she did not take him back. The latter incident prompted her to seek a temporary restraining order.
- The petitioner's Family Offense Petition dated February 27, 2004, outlining the February 22, 2004 incident described above and asserting there were "many occasions in which [her husband] would punch, kick, and slap her."
- A temporary restraining order and two extensions.
- An assessment written by [REDACTED] CSW, BCK dated June 11, 2004 that relates what the petitioner had told her, i.e., that her husband had assaulted her on at least 5 different occasions. The assessment states:

The couple separated in March 28, 1999, after [the petitioner's spouse] came home "drunk" and started accusing her of being with another man. She denied the allegation . . . he became furious and aggressive, taking off his belt and hitting her with the buckle on her right leg and left upper leg, causing bruises, leaving scars. He punched her on the face with his fists and on her "ribs." At the time she was pregnant. . . .

[The petitioner] did not see her husband again until February of this year (2004). She was at a restaurant, with two girl friends when he arrived. . . .

- Numerous affidavits of acquaintances of the petitioner and her husband stating that they were a "lovely couple."

The petitioner's affidavit dated February 7, 2005, stating that her friends' affidavits failed to mention abuse because he did not abuse her in their presence. She further stated that she did not seek a permanent restraining order against her husband because he "ceased to have any additional contact with [her]."

There are several incongruities in the petitioner's evidence. The petitioner did not provide the same detail about her husband's abusive conduct in her own affidavits as was provided in the assessment. The petitioner did not mention the numerous incidents of abuse in her own affidavits even though she does mention them in general terms in her Family Offense Petition. The petitioner indicated in her own statement that she went to a restaurant alone where her husband confronted her in February 2004. The assessment indicates that the petitioner was with two girl friends at the restaurant when she was confronted by her husband, and left with her two girl friends. The petitioner failed to provide a reasonable explanation for this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner

submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It is noted that the petitioner failed to provide Citizenship and Immigration Services (CIS) with police reports, although she claims to have called the police twice on domestic violence issues. The evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse.

The next issue to be addressed in this proceeding is whether the petitioner established that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). On May 5, 2004, the director requested the petitioner to submit evidence to establish that she entered into the marriage in good faith. The director listed the types of evidence that would show that the petitioner had married her husband in good faith. The petitioner provided CIS with her own statements and brief affidavits of friends that state that the petitioner and her husband were a "lovely couple."<sup>1</sup> The affidavits provided scant detail about the petitioner's relationship with her husband and are insufficient evidence that the petitioner entered into the marriage in good faith. The petitioner failed to submit copies of insurance policies in which she or her spouse was named as the beneficiary. She provided no bank statements, tax records and other documents that show they shared accounts. She provided little evidence of her courtship, and wedding ceremony. She provided no evidence of joint ownership of property. She asserted that she and her husband had one child born of the marriage but did not provide a birth certificate, explaining that because her husband was not at the hospital at the time of the child's birth, he was not included on the birth certificate.

The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith. Accordingly, the petitioner has not established that she has been battered by, or subjected to extreme cruelty by, her U.S. citizen spouse. She is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, parallel, and her self-petition must be denied.

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.

<sup>1</sup> One of the affiants's [redacted] New York State Identification [redacted] another affidavit written [redacted] the bona fides of the marriage [redacted] (relationship unknown). [redacted]