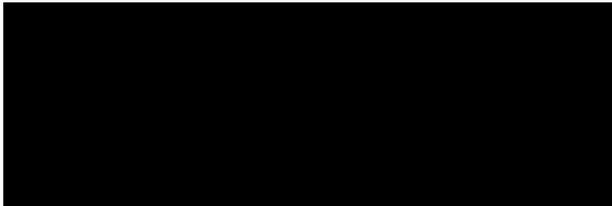




U.S. Citizenship
and Immigration
Services

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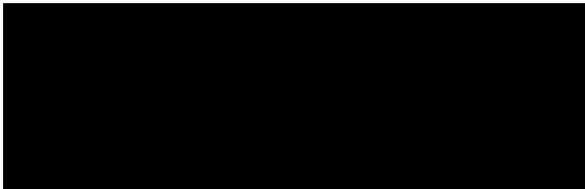
Office: VERMONT SERVICE CENTER

Date: NOV 29 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 on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Colombia 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 U.S. 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 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 [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.

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.

According to the evidence in the record, the petitioner wed United States citizen [REDACTED] in Ocala, Florida on April 27, 2001. On August 29, 2001, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The petitioner filed a Form I-485 application on that same date. On August 5, 2004, the I-485 application was denied due to abandonment. The Form I-130 remains adjudicated.

On February 20, 2004, the instant self-petition was filed by the petitioner 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. Because the petitioner furnished insufficient evidence to establish that she had been battered by or subjected to extreme cruelty by her citizen spouse at the time of filing, on November 4, 2004, the director requested the petitioner to submit additional evidence to establish her claim of abuse. Specifically, the director requested:

- 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.
- A statement, in your own words describing the relationship with your abuser. Be as specific and detailed as possible.

On December 27, 2004, the petitioner responded to the director's request for additional evidence. As it relates to the petitioner's claim of abuse, the petitioner submitted a new statement and statements from acquaintances.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the request for additional evidence. The discussion will not be repeated here.

On appeal, counsel states that the director erred in finding that the petitioner did not adequately establish a claim of abuse. Although counsel states that the petitioner "provided substantial and competent evidence to conclude that she was subject to extreme mental cruelty by the actions taken by her United States citizen spouse in abandoning the marital relationship," the petitioner does not point to specific evidence nor does he specifically identify the director's error. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, although counsel indicated on the Form I-290B that he would send a brief and/or additional evidence to the AAO within 60 days, to date, more than eight months after the filing of the appeal, no further documentation has been received.¹ Accordingly, the record is considered complete as it stands.

In review, the evidence, which consists of the petitioner's statements and the statements from acquaintances, is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse.

In her statement, the petitioner claims that her spouse:

Said things that hurt [her] a lot . . . the actions of [her] husband made [her] think that he was being unfaithful to [her] . . . He humiliated and hurt [her], he then abandoned [her].

The petitioner provides no details to establish how she was "hurt" or "humiliated" other than to state how she felt after her spouse left the marriage. The petitioner makes no claim that she was battered or otherwise physically abused by her spouse. The statements from the petitioner's acquaintances do not provide any more specific details other than to corroborate the fact that the petitioner's spouse left her. The petitioner has not established that she was the subject of abuse or extreme mental cruelty by virtue of being abandoned. Such a claim does establish that the petitioner was subjected to extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

¹ In a fax submitted by counsel, dated November 21, 2005, counsel confirmed that he did not submit a brief or additional evidence in support of the appeal.

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.