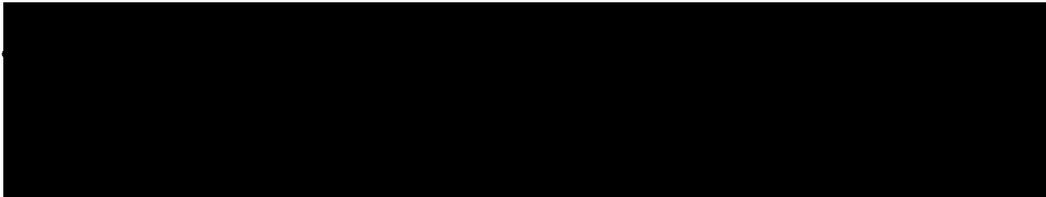


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U.S. Citizenship  
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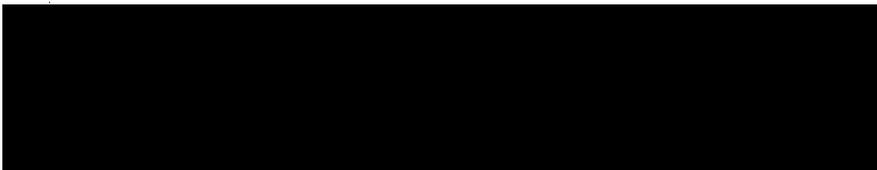
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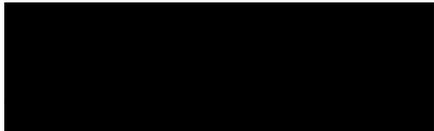
Date: SEP 24 2005

IN RE: Petitioner:  
Beneficiary:



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.

*Mari 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 of Peru and a citizen of Brazil 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 had been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse, is a person of good moral character, and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits additional evidence.

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)(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.

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.

The record reflects that the petitioner entered the United States as a J-2 exchange visitor on February 3, 1992. According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on December 24, 2002 in Franklin Township, New Jersey. On April 8, 2003, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The petitioner filed a Form I-485 application to adjust status to permanent resident concurrently with the Form I-130. On March 1, 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, his

U.S. citizen spouse during their marriage. On September 10, 2004, the parties legally terminated their marriage by divorce.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he 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.

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).

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show, in part, that he has resided with his citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that he has resided with his spouse, is a person of good moral character, entered into the marriage in good faith and has been abused by, or the subject of extreme cruelty perpetrated by his citizen spouse, on October 4, 2004, the director issued a request for evidence (RFE) asking him to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that he had resided with his spouse, that he married his spouse in good faith, and that he is a person of good moral character.

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

On appeal, counsel for the petitioner provided additional evidence that had been requested by the director in the October 4, 2004 RFE, including a letter written by [REDACTED] LSCW, dated March 2, 2005, indicating that the petitioner had been treated for depression and alcohol abuse at the University of Medicine and Dentistry of New Jersey; an initial psychiatric evaluation dated August 9, 2004; and a certificate of good conduct from the Township of Piscataway police department. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse. The evidence consists of the following:

- The petitioner's statements.
- Two police reports dated September 20, 2000 and August 22, 2002.

The petitioner stated that he and his wife engaged in loud arguments during which they would insult and offend one another. He said that his wife was possessive and short-tempered. The petitioner's wife was the complainant in the two police reports. The reports indicate that the petitioner and his wife recanted their stories and that the officers found there was no domestic violence. It is noted that the petitioner failed to file a complaint with the police against his spouse. The petitioner submitted evidence that he sought psychological help. He said that once they separated and divorced, he fell into a deep depression. He did not submit evidence that he sought refuge in a

shelter or elsewhere. He did not obtain an order of protection against his spouse or take other legal steps to end the abuse. His statements are insufficiently specific as to the exact harm he suffered from his spouse. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director determined and the AAO concurs that the petitioner failed to establish that he had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). The petitioner provided Citizenship and Immigration Services (CIS) with the following evidence:

- The petitioner's statements.
- Photographs of the petitioner alone and of his spouse alone taken at a beach.
- Photographs of the petitioner and his wife on their wedding day.
- A tax document dated June 23, 2003 addressed to both the petitioner and his spouse at 690 Easton Avenue.
- A Department of Treasury envelope addressed to both the petitioner and his wife [REDACTED] with a forwarding address to the petitioner's spouse alone at [REDACTED]
- A copy of a magazine cover addressed to the petitioner's spouse at [REDACTED]
- An AAA envelope addressed to the petitioner's spouse at [REDACTED]
- A water utility bill addressed to the petitioner's spouse at [REDACTED]
- A Somerset bank envelope addressed to the petitioner's spouse at [REDACTED]
- A tax document from Raritan Valley Community College addressed to the petitioner's spouse [REDACTED]
- Medical bills dated September 7, 2004 and November 17, 2004 addressed to the petitioner at [REDACTED]
- Evidence that the petitioner had insurance in effect for himself alone as of June 9, 2004.
- A municipal court receipt dated October 22, 2003.
- A Verizon bill dated February 8, 2003 at [REDACTED]
- An adjustment interview notice addressed to the petitioner's attorney.
- A tax worksheet.
- Five Form 1099's (2002) addressed to the petitioner at [REDACTED]
- A mortgage interest statement addressed to the petitioner alone at [REDACTED]
- Mortgage statement addressed to the petitioner alone at [REDACTED]
- An address label.
- A letter from a tax preparer to both the petitioner and his spouse dated April 15, 2003.
- An unsigned 2002 joint tax return.
- The petitioner's affidavits dated February 25, 2004 and December 1, 2004.
- A medical bill to the petitioner's wife forwarded to a new address on [REDACTED]
- A divorce decree awarding the [REDACTED] properties to the petitioner on September 10, 2004.

The evidence does not demonstrate that the petitioner and his wife shared assets or financial responsibilities with one exception of their 2002 federal tax return. The evidence shows that the petitioner held a mortgage in his name alone. Although the petitioner indicated that he and his wife resided together until November 2004, the divorce decree was final as of September 2004. Further, the petitioner's wife's mail was forwarded to a new address as early as August 9, 2003. Wedding photographs do not demonstrate the petitioner's intent to enter a

marriage in good faith. There is no evidence that the petitioner or his spouse named the other as beneficiary for life or health insurance. No children were born of the marriage. The petitioner's description of his courtship and marriage is abbreviated. The evidence on the record is insufficient to establish that the petitioner married his citizen spouse in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that he is a person of good moral character. In the October 4, 2004 RFE, the director specifically requested that the petitioner submit police clearances or records from each place he had resided for at least six months during the 3-year period before filing the Form I-360 petition. The director also requested that the petitioner submit copies of arrest reports, copies of court documents showing the final disposition of the charges and relevant excerpts of law for that jurisdiction showing the maximum possible penalty for each charge. The petitioner provided CIS with a clearance within the Franklin Township Police Department. The clearance was performed under only one rendition of the petitioner's name [REDACTED] whereas the director had advised the petitioner that name searches must be conducted under all of his aliases and listed four. He further provided evidence that he had been arrested on November 9, 1999 in Woodbridge Township for obstruction of the administration of law (2C:29-1) [REDACTED]. He was arrested on October 2, 2003 in Piscataway, New Jersey, and charged with simple assault in a domestic violence case (2C:12-1A(1)) [REDACTED]. The petitioner submitted the final disposition of the latter charge. On October 22, 2003, he pled guilty to the assault charge. The charge was held in abeyance for 60 days and the petitioner was directed to attend an anger management course. On December 18, 2003, the assault charge was dismissed. As discussed, the petitioner failed to provide a police clearance based on all known renditions of his name, nor has he provided evidence of the final disposition of his charge for obstruction of the administration of law. Therefore, he has failed to establish that he is a person of good moral character.

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.