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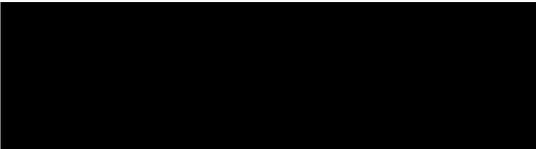
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: SEP 23 2005
EAC 04 093 52501

IN RE: Petitioner: [REDACTED]
Beneficiary: [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.

Mari Johnson

8 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Ghana 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 he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse.

On appeal, counsel for the petitioner reiterates the evidence on the record and submits a summary of a 9th circuit court decision, *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003).

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.

According to the evidence on the record, the petitioner wed U.S. citizen Ingrid Edinboro on August 29, 2000, in Kissimmee, Florida. The petitioner's wife filed a Form I-130 petition on his behalf on July 5, 2001. She subsequently withdrew the Form I-130 petition on January 31, 2002. On February 24, 2004, the petitioner filed a Form I-360 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. The parties legally terminated their marriage on October 13, 2004.

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).

Because the petitioner furnished insufficient evidence to establish that he has been battered or subjected to extreme cruelty by his citizen spouse, he was requested on September 23, 2004 to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty.

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 indicates that the evidence is sufficient to establish that the petitioner has been the subject of extreme cruelty perpetrated by the citizen spouse during the marriage.

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)(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.

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 attorney's explanation of documentation submitted with the petition.
- An unsigned statement of the petitioner that was prepared by a third party.
- The petitioner's statements.
- A police report dated March 17, 2002 indicating that the petitioner and his wife had a verbal disagreement.
- A police report dated April 2, 2002 in which the petitioner stated that his wife had thrown his personal property out of their residence. The report states that there was no physical contact between the petitioner and his wife.
- An ex parte order dated March 9, 2004.
- An extension of the original ex parte order until May 28, 2004.

It is noted that the petitioner failed to obtain a permanent restraining order. He failed to submit reports or affidavits from medical personnel, counselors, social workers or other social service agency personnel. The petitioner failed to seek refuge in a shelter for the abused. The petitioner failed to submit evidence that he sought psychological treatment for any abuse he endured.

According to the petitioner's statements, his wife extorted money from him, called him names, threw his belongings out of their residence, made threatening phone calls, and created a scene at his place of employment.

The director determined that the treatment the petitioner received from his wife is not abuse or extreme cruelty as defined in the regulations. The AAO concurs. The conduct described does not rise to the level of extreme cruelty. The petitioner indicated that he and his wife disagreed about a number of issues. This is an issue of compatibility rather than one of abuse. The petitioner complained that his wife caused a scene at his workplace and threw out his possessions.

On appeal, counsel posed the following rhetorical question:

So, are we waiting to see if these individuals attack or kill each other before any physical or psychological damage has been done? It is not enough that my client[’s] spouse threw him out on the street without clothes, and depraves him in front of co-workers and friends! In addition, she stole and trashed his personal belongings and most importantly threaten[ed] to have him deported to Ghana.

Counsel submitted an article summarizing a recent opinion issued by the United States Court of Appeals for the Ninth Circuit, *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003). Counsel failed to indicate how the facts in the instant case are analogous to those in *Hernandez v. Ashcroft*. The facts in *Hernandez v. Ashcroft* are as follows: while living in Mexico, [REDACTED] experienced life-threatening violence at the hands of her husband, a legal permanent resident of the United States. She fled to the United States, but her husband tracked her down, promised not to hurt her again, and begged her to return to Mexico with him. After [REDACTED] submitted to his demand and returned to Mexico, the physical abuse began again. [REDACTED] fled to the United States and applied for suspension of deportation under a provision of the Violence Against Women Act of 1994 (VAWA) intended to protect immigrants who have suffered domestic violence. The Board of Immigration Appeals (BIA) affirmed the immigration judge’s denial [REDACTED] application because it determined that Hernandez had not “been battered or subjected to extreme cruelty *in the United States*,” as the statute then required. The Ninth Circuit Court reversed the BIA’s denial of suspension of deportation, finding that although [REDACTED] was not battered in the United States, the interaction that took place in the United States presents a well-recognized stage within the cycle of violence, one which is both psychologically and practically crucial to maintaining the batterer’s control. The court held that “an abuser’s behavior during the ‘contrite’ phase of domestic violence may, and in circumstances such as those present [in [REDACTED] constitute ‘extreme cruelty.’”

In the instant case, the petitioner does not claim that his wife physically battered him, but rather, that she subjected him to extreme cruelty. He said his wife threatened to have him deported, threw his possessions out of their apartment, extorted money from him, called him names, made threatening phone calls, and created a scene at his place of employment.

The issue in the instant case is whether the conduct complained of rises to the level of “extreme cruelty.” The issue in *Hernandez* was whether the alien had been battered or subjected to extreme cruelty *in the United States*,” as the statute then required. Nonetheless, the court’s discussion of extreme cruelty in the *Hernandez* decision is illustrative:

Congress’s intent in allowing a showing of either battery or extreme cruelty was to protect survivors of domestic violence. H.R. Rep. 103-95, at 37-38. Under the [Legacy] INS’s regulation, any act of physical abuse is deemed to constitute domestic violence without further inquiry, while “extreme cruelty” describes all other manifestations of domestic violence. Non-physical actions rise to the level of domestic violence when “tactics of control are intertwined with the threat of harm in order to maintain the perpetrator’s dominance through fear. [REDACTED] Understanding Domestic Violence, in *Improving the Health Care Response to Domestic Violence 20 [REDACTED] & [REDACTED] eds., 1996*). (“Emotional abuse in domestic violence cases is not merely a matter of someone getting angry and calling his partner a few names or cursing. Not all verbal insults between partners are acts of violence.”) Congress required a showing of extreme cruelty in order to ensure that section 244(a)(3) protected against the extreme concept of domestic violence, rather than mere unkindness.

In the instant case, the evidence is insufficient to establish that the petitioner was the subject of extreme cruelty by his citizen spouse during their marriage. The petitioner failed to establish that his wife's control tactics were sufficiently intertwined with the threat of harm in order to maintain her dominance through fear. The conduct complained of does not rise to the level of extreme cruelty.

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.