



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B9



FILE: [REDACTED]
EAC 04 055 52755

Office: VERMONT SERVICE CENTER

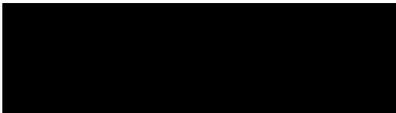
Date: SEP 26 2005

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 on February 15, 2005. 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 Cape Verde 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 or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On appeal, counsel for the petitioner submitted 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 record reflects that the petitioner last entered the United States as a B-2 nonimmigrant visitor on October 28, 1996. She wed her citizen spouse, [REDACTED] on July 1, 2000 in East Providence, Rhode Island. The petitioner's spouse filed a Form I-130 on her behalf on September 28, 2001. On April 28, 2003, the petitioner's spouse withdrew the petition. The petitioner was placed in removal proceedings on June 30, 2003.¹ On December 18, 2003, 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, her U.S. citizen spouse during their marriage.

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, 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.

¹ The petitioner is scheduled for an immigration hearing on August 23, 2006.

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 that she has resided with her 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 her husband's immigration status and that she had been abused by, or the subject of extreme cruelty perpetrated by, her citizen spouse, she was requested on August 24, 2004 to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. He specifically requested that she submit an evaluation from her counselor or psychologist. In response to the request for additional evidence, counsel for the petitioner submitted evidence to establish that the petitioner's spouse was a U.S. citizen. The petitioner failed to submit any evidence relating to abuse in response to the director's request for additional evidence.

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.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse.

The petitioner initially submitted the following evidence relating to abuse:

- The petitioner's affidavit dated November 16, 2003.
- A bill for emergency room care administered to the petitioner on October 19, 1998.

On appeal, counsel for the petitioner submitted the following additional evidence relating to abuse:

- The petitioner's affidavit dated April 14, 2005.
 - A medical report dated October 19, 1998.
 - Two medical bills.

In her initial affidavit, the petitioner stated that her husband is an alcoholic and that while intoxicated, he "verbally and mentally abused" her. She stated that her husband verbally abused her on a regular basis and that he screamed and swore at her. She said that he threatened to have her deported and left her home alone. She wrote that he left her at the hospital to go through delivery of their child alone. She said that she became depressed since he abandoned her and their child.

The petitioner's affidavits lack descriptions of specific instances of abuse. The petitioner equates abandonment with abuse. Abandonment, per se, is not tantamount to battery or extreme cruelty within the meaning of 8 C.F.R. § 204.2(c)(1)(vi). The medical bills provide no explanation for their bases. The petitioner submitted one medical report that indicates she was engaging in suicidal ideation because she and her boyfriend were discussing separation. The same medical report indicates that the petitioner would be referred to a health care provider for

an eating disorder. The report does not indicate that abuse was an issue. The petitioner explained in her second affidavit that the medical records referred to her spouse as her boyfriend.² The petitioner's statements are insufficiently specific as to the exact harm she suffered from her 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). Some of the behavior she describes does not rise to the level of abuse or extreme cruelty. It is noted that the petitioner failed to file a complaint with the police against her spouse. She failed to submit reports and affidavits from court officials, police, counselors, or social workers. The petitioner did not submit evidence that she sought refuge in a shelter or elsewhere. She did not obtain an order of protection against her spouse or take other legal steps to end the abuse.

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.

² The petitioner did not wed her spouse until 2000.