



U.S. Citizenship
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FILE: [Redacted]
EAC 03 028 53655

Office: VERMONT SERVICE CENTER

Date: SEP 28 2005

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (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 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 by or the subject of extreme cruelty perpetrated by his citizen spouse.

The petitioner 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 citizen of the United States, 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.

According to the information contained in the record, the petitioner wed United States citizen [REDACTED] on September 8, 1997 in Newark, New Jersey. Subsequently, the petitioner's spouse filed a Form I-130 on the petitioner's behalf. The petitioner then filed a Form I-485, Application to Adjust Status, on January 14, 1998. On November 3, 1999, the petitioner was placed in removal proceedings. The record reflects that the petitioner was granted voluntary departure until April 18, 2001.

On February 19, 2002, the petitioner filed a Form I-360 self-petition¹ claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse during their marriage. The petition was denied on October 10, 2002 based upon the director's determination that the petitioner failed to establish eligibility. On November 19, 2002, the petitioner filed the instant Form I-360 petition.

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.

Further, 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.

¹ EAC 02 121 52469

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 petitioner submitted no supporting documentation at the time of filing. Accordingly, on July 15, 2003, the director requested the petitioner to submit evidence of his good moral character and that he entered into his marriage in good faith. As it relates to the petitioner's claim of abuse, the director specifically 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 August 18, 2003, the petitioner, through counsel, requested an extension of 60 days in which to produce the requested documents. On September 15, 2003, the petitioner provided his response to the director's request. The evidence submitted by the petitioner in response to the director's request for evidence included insurance information, telephone bills, a lease, and copies of checks. Although the petitioner submitted a signed statement, the statement was not made under oath and does not provide any specific information or details about the "verbal abuse" he purportedly suffered. In his statement, the petitioner indicates that they had "vicious arguments . . . due to cultural differences" but that he "always moved out before the argument got physical." The petitioner then indicates that he discovered that his wife was "going along with another man" and that she abandoned him.

Similarly, although the three letters provided by the petitioner's acquaintances indicate such things as the petitioner has "diligently tried to reconcile their differences," that the petitioner is "decent and respectable," and that the petitioner "has been a good husband and provider," the letters do not describe any incidents of abuse.

The director denied the petition on September 23, 2004, after reviewing and discussing the evidence contained in the record, including the evidence submitted in response to the director's request for evidence. On appeal, the petitioner claims that the director erred in denying the petition. The petitioner provides a second unsworn statement and a letter from the petitioner's pastor.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal.

We note that even if the petitioner's appellate submission is considered, it is not sufficient to overcome the director's stated ground for denial. The petitioner's statement and the statement of the petitioner's pastor do not provide sufficient detail to substantiate the claim of abuse and fail to establish that the petitioner was battered or subjected to extreme cruelty. For instance, the petitioner indicates that his spouse's "manners . . . were gone," that she made "smart comments," and called the petitioner names. Such descriptions do not show that the petitioner's spouse's actions rose to such a level as to be considered battery or extreme cruelty. The statement by the petitioner's pastor indicates only that the petitioner has "been receiving some counseling services . . . following his report/request . . . regarding abuses by his legal wife." The letter does not describe the "abuses" purportedly suffered by the petitioner, such as whether the abuse was physical or psychological or both, or any details about specific incidents of abuse.

We further note that the petitioner's claims on appeal differ from those previously submitted. Specifically, contrary to petitioner's previous statement that he always left before their arguments got physical, on appeal the petitioner now claims that "[o]n more than three occasions [his spouse] slapped" him. 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).

As discussed above, the record contains insufficient and contradictory evidence regarding the petitioner's claim of 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.