

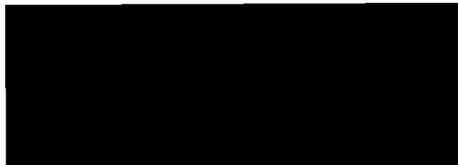


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

59



FILE: [REDACTED]
EAC 04 119 54055

Office: VERMONT SERVICE CENTER

Date: **APR 14 2006**

IN RE: Petitioner: [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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

1/5
J

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of Mali who entered the United States as a nonimmigrant visitor (B-2) on December 25, 2000 and was granted authorization to remain in the United States until January 20, 2001. On April 14, 2003, the petitioner married [REDACTED] a U.S. citizen, in Aurora, Colorado. On June 9, 2003, Ms. [REDACTED] filed a Form I-130 on behalf of the petitioner, but she withdrew the petition on December 10, 2003 and Citizenship and Immigration Services (CIS) denied the I-130 petition on that date. On January 23, 2004, CIS denied the petitioner's concurrently filed Form I-485 application to adjust status and served the petitioner with a Notice to Appear for removal proceedings pursuant to sections 237(a)(1)(B) and 237(a)(1)(C)(i) of the Act. The petitioner's next removal hearing is scheduled for August 2, 2006.

On March 13, 2004, the petitioner filed a Form I-360 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 an alien subjected to battery or extreme cruelty by his United States citizen spouse. The director denied the petition because the record did not establish that the petitioner was battered by or subjected to extreme cruelty by his U.S. citizen spouse during their marriage. On appeal, counsel contends that the director did not consider Ms. [REDACTED] complaints for protection orders against the petitioner and the petitioner's friend. Contrary to counsel's claim, Ms. [REDACTED] complaints do not establish extreme cruelty. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty and find that counsel's claims on appeal do not overcome this basis for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) further explicates the statutory requirements and states, in pertinent part:

(vi) 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, including rape,

molestation, incest (if the victim is a minor), or forced prostitution 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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *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 abuse 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.

On appeal, counsel claims that extreme cruelty is established by Ms. [REDACTED] false allegations in her complaints for protection orders against the petitioner and his friend, combined with the petitioner's own affidavits and those of two of his friends. This evidence does not support counsel's claim. In his March 8, 2004 affidavit, the petitioner states that in November 2003, Ms. [REDACTED] told him that she had a medical problem, that they could no longer have intimate relations and that the petitioner should move out. On December 5, 2003, the petitioner states that when he came home from work, the petitioner had packed his belongings and kicked him out of the house. The petitioner describes several instances where he paid bills for Ms. [REDACTED] and states that on one occasion she caused an overdraft of their joint bank account. On January 12, 2004, the petitioner states that Ms. [REDACTED] threatened to have the petitioner deported because he did not give her \$500. Later that month, the petitioner explains that his lawyer told him that Ms. [REDACTED] had cancelled his immigration case and that the petitioner would have to appear before an immigration judge.

On January 31, 2004, the petitioner states that Ms. [REDACTED] called him and asked him to visit her because she had something very important to tell him. The petitioner reports that he went to Ms. [REDACTED] residence with his friend [REDACTED]. When they arrived, the petitioner states that Ms. [REDACTED] told him that she would withdraw her letter to CIS if he paid her rent for the month, but he declined. The petitioner explains that Ms. [REDACTED] then filed a complaint for a protection order based on her false allegations concerning this visit.

Ms. [REDACTED] Verified Complaint for Protection Order filed on February 5, 2004 with the Jefferson County, Colorado Court, states that the most recent and serious incident of the petitioner's alleged abuse occurred on January 29, 2004 when Ms. [REDACTED] refused to sign immigration papers for the petitioner's lawyer and the petitioner "stood up and ask me to look I said no. He hell [sic] his shirt up and padded something on his waist. What look like a gun. I was afrid [sic] to look. He keep yelling stated thid [sic] I wouldn't live the rest of my life." On February 5, 2004, Ms. [REDACTED] also filed a Verified Complaint for Protection Order against Mr. [REDACTED] in which she states that on January 31, 2004, [REDACTED] he was yelling at me if I don't change my mind and help my husband. He stated 'people could come up dead[.]'" The court denied Ms. [REDACTED] complaints after a hearing attended by both the petitioner and Ms. [REDACTED].

In response to the director's December 22, 2004 notice requesting additional evidence of extreme cruelty, the petitioner submitted a second affidavit and affidavits from two of his friends. In his January 12, 2005 affidavit, the petitioner states that after he and his wife returned from their interview with CIS, Ms. [REDACTED] began insulting him with derogatory names and threatening to get him deported on a daily basis. The petitioner reports that his wife's treatment made him depressed, unable to concentrate or work effectively; and caused him to lose his self-confidence and have nightmares and other problems sleeping and eating. [REDACTED] the petitioner's friend and co-worker, states that after Ms. [REDACTED] kicked the petitioner out of his home, Mr. [REDACTED] saw how depressed and stressed out he was." Mr. [REDACTED] does not state that he actually witnessed any conflicts between the petitioner and Ms. [REDACTED]. Mr. [REDACTED] states that he was, on "many occasions a witness to the threats and name calling by [the petitioner's] wife[.]" but he does not describe in detail any of these incidents.

Ms. [REDACTED] dismissed complaints and the affidavits do not establish that Ms. [REDACTED] behavior rose to the level of battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner states that he repeatedly paid bills for his wife, but he does not report that she ever used or threatened to use violence against him if he did not do so. The petitioner states that Ms. [REDACTED] kicked him out of their apartment, but he does not state that she used or threatened to use force or violence to make him leave. The petitioner also explains that his wife stopped having intimate relations with him and began seeing her ex-boyfriend again. The record does not persuasively establish, however, that the financial and marital problems caused by Ms. [REDACTED] were part of an overall pattern of physical violence or amounted to psychological or sexual abuse.

The record is also devoid of any documentation of Ms. [REDACTED]s alleged extreme cruelty of the types described in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The petitioner submitted no evidence that he

ever called the police or took legal steps to end his wife's alleged abuse. The petitioner reports experiencing depression, stress and disturbed sleep and appetite, but the record does not indicate that he ever sought medical or mental health treatment for these problems or that he sought assistance from religious figures or social service agencies. The petitioner also does not explain why he did not seek help in dealing with his wife's alleged abuse. For example, the petitioner does not state that cultural barriers or financial limitations prevented him from calling the police, seeking assistance from other authorities, or obtaining medical or mental health treatment for the effects of his wife's alleged extreme cruelty.

The petitioner has not established that he was battered or subjected to extreme cruelty by his United States citizen spouse. Based on the current record, the petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Consequently, the case must be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.