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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 0411251709

Office: VERMONT SERVICE CENTER

Date: AUG 01 2006

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 seeks classification as an immigrant pursuant to section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition, finding that the petitioner failed to establish that she had a qualifying relationship with a U.S. lawful permanent resident.

On appeal, the petitioner submits a letter and additional evidence.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or the alien's child was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

An alien who has divorced a U.S. lawful permanent resident may still self-petition for immigrant classification under section 204(a)(1)(B)(ii) of the Act if the alien demonstrates that he or she is a person

who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

* * *

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse.

Section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

* * *

(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.

The petitioner in this case is a native and citizen of Colombia who entered the United States on January 30, 2000 as a nonimmigrant spouse of a temporary worker (H-4). On June 21, 1997, the petitioner married [REDACTED] in Colombia. The couple was divorced on October 10, 2001 by order of the Indian River County Circuit Court of Florida. Citizenship and Immigration Services (CIS) records show that [REDACTED] became a lawful permanent resident of the United States on June 19, 2003. On February 28, 2004, the petitioner filed this Form I-360. On July 12, 2005, the director denied the petition because the petitioner did not have a qualifying relationship with a U.S. lawful permanent resident at the time her petition was filed. The director also noted that the petitioner submitted insufficient evidence of battery or extreme cruelty. The petitioner timely appealed.

On appeal, the petitioner states that [REDACTED] divorced her against her will and that the director's assessment of her marital problems did not correspond to the "raw reality of [her] suffering." We concur with the director's conclusion and find that the petitioner's statements and the evidence submitted on appeal do not overcome the grounds for denial. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Battery or Extreme Cruelty

As evidence of battery or extreme cruelty, the petitioner submitted statements from herself and four friends and relatives. In her undated statement, the petitioner explains that [REDACTED] abandoned her, their son and her daughter without cause, lied to her about the immigration process, and prevented her and her daughter from obtaining lawful permanent residency in the United States. The petitioner does not provide any chronological or substantive details about [REDACTED] behavior and does not describe any particular incidents of physical or psychological abuse.

[REDACTED] the petitioner's friend, states that in 2000 the petitioner and her children were visiting Colombia and [REDACTED] called [REDACTED] and told her to pick them up at the airport upon their return to the United States because he was not going to be there anymore and had talked to a lawyer about getting a divorce. [REDACTED] does not describe any incidents of [REDACTED] abuse of the petitioner or her children that she witnessed or provide any further probative details. [REDACTED]

[REDACTED] the petitioner's sister-in-law, states that in June 2000 she and her husband heard rumors that [REDACTED] was going to divorce the petitioner. [REDACTED] reports that she and her husband went to meet the petitioner at the airport upon her return from Colombia and that [REDACTED] also came to the airport and "broke the news" to the petitioner, who was very upset. [REDACTED] further states that she understood that the agreement between the former couple was such that they would separate, but not get divorced until the immigration papers came through for the petitioner and her daughter. However, [REDACTED] reports that [REDACTED] broke his promise and divorced the petitioner before she and her daughter could obtain lawful permanent residency. [REDACTED]

[REDACTED] the petitioner's biological sister, confirms that [REDACTED] abandoned the petitioner and her children, cut off the utilities for their apartment and broke his promise that the divorce would not jeopardize the petitioner's immigration status.

[REDACTED] another friend of the petitioner, states that [REDACTED] left the petitioner without any economic support and cut off the utilities for their apartment. [REDACTED] describes one occasion after the couple's separation when [REDACTED] was scheduled to pick up their son for visitation. When the petitioner arrived 15 minutes late, [REDACTED] states that [REDACTED] was waiting with a police officer. [REDACTED] relates another incident where [REDACTED] did not return with the couple's son until approximately 6:00 in the evening on Mother's Day. [REDACTED] further states that he accompanied the petitioner to court on one occasion where [REDACTED] had cut some money out of their son's support check and on another occasion when the petitioner expressed her unwillingness to divorce [REDACTED] because she had not yet adjusted status, but the judge told her

that he could do nothing about her immigration status. We concur with the director's determination that the evidence submitted below does not establish the requisite battery or extreme cruelty and we do not repeat her discussion here.

On appeal, the petitioner provides further details about how [REDACTED] allegedly deceived her about the immigration process and submits a copy of a handwritten agreement from a mediation report which specifies that [REDACTED] would not schedule or attend a final hearing for their divorce until October 10, 2001 or until the petitioner receives her "green card," whichever occurred earlier. The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The record does not show, for example, that the petitioner sought help from the police, legal authorities, medical personnel, clergy or social service agency personnel to escape or deal with the effects of Mr. [REDACTED] purported abuse. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The evidence submitted on appeal does not establish that [REDACTED] battered or subjected the petitioner or her children to extreme cruelty during their marriage pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The record does not indicate that [REDACTED] ever physically assaulted the petitioner or her children or that his nonviolent actions amounted to psychological abuse or were part of an overall pattern of violence. Accordingly, the present record does not demonstrate that [REDACTED] subjected the petitioner or her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Preference Immigrant Classification

The record shows that the petitioner and [REDACTED] were divorced on October 10, 2001. The petitioner filed this Form I-360 on February 28, 2004, over two years after their divorce. CIS records further show that [REDACTED] did not become a lawful permanent resident of the United States until June 19, 2003, over two years after his divorce from the petitioner. The present record also fails to establish that [REDACTED] battered or subjected the petitioner or her children to extreme cruelty during their marriage. For these three reasons, the petitioner is ineligible for immigrant classification pursuant to sections 204(a)(1)(B)(ii)(II)(aa)(CC) and 204(a)(1)(B)(ii)(II)(cc) of the Act. On appeal, the petitioner submits no evidence that overcomes these grounds for denial.

The present record does not demonstrate the petitioner's eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her 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.