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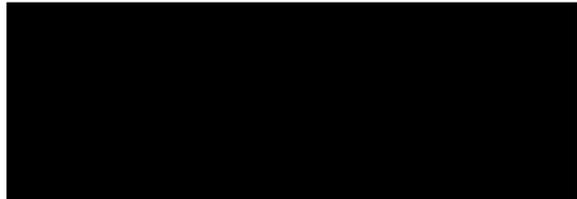
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

EAC 05 117 53204

Office: VERMONT SERVICE CENTER

Date: AUG 14 2006

IN RE:

Petitioner:



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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that her husband battered or subjected her to extreme cruelty.

On appeal, counsel submits a brief and additional evidence.

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) 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.

The petitioner in this case is a native and citizen of Venezuela who was paroled into the United States on August 24, 2004. On March 29, 2004, the petitioner married [REDACTED] a U.S. citizen, in Maryland. On March 17, 2005, the petitioner filed this Form I-360. On June 30, 2005, the director requested additional evidence of [REDACTED] battery or extreme cruelty. The petitioner, through counsel, requested and was granted additional time to respond and submitted further evidence on October 31, 2005. On December 8, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty.

On appeal, counsel asserts that the director mischaracterized and oversimplified the petitioner's marital experiences because the testimony of the petitioner, her friend and uncle was written in English although these individuals are all native Spanish speakers. Counsel states that the petitioner related to her in Spanish a more detailed and in-depth description of her relationship with [REDACTED]. In particular, counsel describes an incident concerning the former couple's argument about [REDACTED] religious pictures. However, the petitioner herself does not discuss this incident in any of her own statements submitted below and on appeal. Consequently, we cannot consider counsel's statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We concur with the director's conclusion and find that counsel's claims and the evidence submitted on appeal do not overcome the ground 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 initially submitted her January 25, 2005 personal statement. The petitioner states that she and [REDACTED] "argued constantly over trivial things," that [REDACTED] often asked her for her engagement and wedding rings and took her suitcases down for her to pack and leave. The petitioner reports that the night before the couple's immigration interview, they had a big argument and [REDACTED] bought her an airplane ticket back to Venezuela in the middle of the night, told her he would not go to the interview and asked her to leave their home. The petitioner went to stay with relatives, but remained in contact with [REDACTED] who she states never stopped calling her, played "mind games" with her, manipulated her and served her with a divorce complaint about two months later.

In response to the director's request, the petitioner submitted her second statement and letters from her uncle, friend and counselor. In her October 21, 2005 statement, the petitioner explains that on the morning of the day their immigration interview was scheduled, she tried to talk with [REDACTED], but he ignored her, closed doors in front of her and said he loved her, but she had to leave because he could not put up with the stress anymore. The petitioner states that [REDACTED] took her debit card, withdrew all her money and then he and his father drove her to the bus station and gave her the money from her account and an additional \$300. The petitioner explains that after she left, [REDACTED] continued to call her and confused her by indicating that he wanted to get back together, but blaming her and making her feel guilty. The petitioner states that after [REDACTED] had filed for divorce, he wanted to continue dating her and once told her that if she wanted to reconcile, she would have to sign a paper renouncing all her rights as a wife.

[REDACTED] the petitioner's uncle, states that the petitioner came to stay with him in August 2004. He reports that the petitioner was extremely depressed and overwhelmed when she arrived and told him about her difficulties with [REDACTED]. [REDACTED] reports that during the three months that the petitioner stayed with him, [REDACTED] called frequently, was indecisive about mending their relationship and that his mood swings confused the petitioner and disturbed her sleep. [REDACTED] the petitioner's friend, states that the petitioner stayed with him and his wife after she left her uncle's home in November 2004. [REDACTED] reports that [REDACTED] called the petitioner at their home and manipulated her feelings. [REDACTED] further states, "Taking under consideration the facts on [sic] this relationship, and knowing the different personalities involved, appeared [sic] as a constant fight of powers that never ends."

In her October 27, 2005 letter, [REDACTED] the petitioner's counselor, states that she began seeing the petitioner in January 2005 and that they subsequently had 12 one-hour sessions. Ms. [REDACTED] states that at their initial session, the petitioner "presented with symptoms consistent of [sic] those individuals with depression and anxiety following a life altering event." [REDACTED] then describes the petitioner's relationship with [REDACTED] and concludes, "Her husband's actions and verbal attacks, as described by [the petitioner], appear mentally abusive, manipulative, and erratic."

We concur with the director's determination that the evidence submitted below does not establish battery or extreme cruelty and we do not repeat her discussion here. On appeal, the petitioner submits a third, undated statement that is written in Spanish and accompanied by a certified English translation. The petitioner largely repeats her statements regarding [REDACTED] behavior and adds that he called her derogatory names, constantly blamed her for the failure of their marriage and controlled her because "he knew [he] had the upper hand." The petitioner also states that she felt afraid and contemplated suicide for the first time in her life. However, the petitioner does not discuss any specific incidents of [REDACTED] alleged abuse in any probative detail and does not mention the incident recounted by counsel on appeal. In her January 4, 2006 letter submitted on appeal, [REDACTED] states that the petitioner described herself as self-sufficient and confident prior to her relationship with [REDACTED] but that the petitioner now has "very low self esteem [and] frequent bouts of helplessness and hopelessness, symptoms associated with a diagnosis of depression and anxiety."

The present record fails to demonstrate that [REDACTED] subjected the petitioner to battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's own statements fail to describe specific incidents of [REDACTED]'s behavior that rose to the level of threatened violence or psychological abuse. [REDACTED] and [REDACTED] confirm that the petitioner was greatly distressed by her husband's behavior, but their testimony provides no evidence of extreme cruelty. Ms. [REDACTED] attests to the adverse effects of the petitioner's relationship with [REDACTED] but her letters do not establish that [REDACTED] subjected the petitioner to extreme cruelty.

The present record does not establish that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) 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 Citizenship and Immigration Services (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.