



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B9

FILE:

[REDACTED]
EAC 05 096 52088

Office: VERMONT SERVICE CENTER

Date: AUG 16 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:

[REDACTED]

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 preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen. The director denied the petition on December 22, 2005, finding that the evidence did not establish that the petitioner was battered by or subjected to extreme cruelty by her spouse.

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 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.

According to the evidence contained in the record, the petitioner married Price on July 17, 2001 in Bakersfield, California. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on May 21, 2002. The petitioner concurrently filed a Form I-485, Application to Adjust Status, and a Form I-601, Application for Waiver of Ground of Excludability, on that same date. The Form I-130 petition and the Forms I-485 and I-601 were denied on March 11, 2005.

The petitioner filed the instant Form I-360 self-petition on February 16, 2005, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her spouse during their marriage. With the initial filing, the petitioner submitted copies of her birth certificate, her spouse's birth certificate, her marriage certificate, divorce decrees for the petitioner and her spouse, the petitioner's California identification card, a personal statement, copies of photographs, a lease, insurance information and a bank statement. The petitioner also submitted a copy of two missing person's reports she filed for her spouse, and a copy of a traffic collision report for the traffic accident in which she and her spouse were involved.

On August 17, 2005, the director requested the petitioner to submit further evidence to establish that she was battered by or subjected to extreme cruelty by her citizen spouse and that she is a person of good moral character. The petitioner responded to the director's request on October 13, 2005 by submitting a second personal statement, the petitioner's pay stubs, 2004 W-2 Wage and Tax Statement and tax return, and evidence related to the petitioner's good moral character.

After reviewing the evidence contained in the record, the director denied the petition finding that the petitioner failed to establish that she was battered by or subjected to extreme cruelty by her spouse. In her decision, while the director did not dispute the petitioner's claims regarding her spouse's drug abuse, the director found that such claims were not sufficient to establish that she was battered by or subjected to extreme cruelty by her spouse.

On appeal, the petitioner, through counsel, submits a brief with no additional evidence. In her brief, counsel reiterates the petitioner's previous claims regarding her spouse's drug addiction. Counsel states that during their marriage, the petitioner's spouse "relapsed more than twenty times and disappeared for two to three weeks at a time," that he made "false promises" to the petitioner, and that because of her spouse's addiction the petitioner was "estranged and isolated from her friends and relatives," and "humiliated by church members." In addition, counsel argues that the petitioner "suffers financial difficulties" and was "blackmailed and threatened on more than five occasions by drugs [sic] dealers" to whom the petitioner's spouse owed money. Counsel then argues that the director's decision "callously disregards substantial evidence of extreme mental and emotional cruelty and dismissed the evidence as 'mental anguish generally associated with marital difficulties,'" and that the director "imposed a higher burden of proof for establishing 'extreme cruelty.'"

Upon review, we are not persuaded by the petitioner's appellate submission and find that petitioner has failed to establish a claim of battery or extreme cruelty. The petitioner's claim of abuse is based upon the assertion that her spouse was addicted to drugs and that he abandoned her. The petitioner also claims that because of her spouse's addiction, she was humiliated in front of and isolated from her family and friends.

We do not find such claims establish that the petitioner was threatened, forcefully detained, psychologically or sexually abused or exploited or that her spouse's actions were part of an overall pattern of violence. First, the petitioner was not isolated from her family and friends because her spouse prevented her from seeing them or contacting them. Rather, the petitioner indicates that they feared the petitioner's spouse because of his drug abuse. Accordingly, such a claim is not sufficient to establish that the petitioner's spouse's behavior was part of an overall pattern of violence or that he was trying to control her contact with her family. Moreover, we note that throughout the petitioner's statements, the petitioner indicates that her relatives served as communication contacts between the petitioner and her spouse and that numerous relatives offered them housing. Thus, despite the petitioner's claim that her relatives feared her spouse, the record contains numerous examples of times where relatives provided shelter and transportation, and served as a communication link between the petitioner and her spouse.

Further, while the petitioner also claims that her spouse detrimentally affected her finances, the record is clear that the petitioner had access to and control over her own money. She indicates knowledge and awareness of

their car insurance, cell phone accounts and bank accounts. Further, her statement indicates that she was involved in the decisions to rent or purchase cars with her spouse. Such facts are not consistent with a claim that the petitioner was economically abused or controlled by her spouse. The fact that she incurred debt on behalf of her husband while they were married is insufficient to establish a claim of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Finally, the fact that the petitioner was threatened and blackmailed by drug dealers is not sufficient to establish a claim of battery or extreme cruelty. The act and the regulation require that the abuse be perpetrated by the petitioner's spouse. The claim that others were threatening the petitioner is not sufficient to establish a claim of abuse.

On appeal, counsel also argues that the director erroneously defined the term extreme cruelty and inappropriately required the petitioner to show that her spouse's behavior was "purposeful" and that he had the "intent to control the petitioner." While we agree with counsel that neither the statute nor the regulations contain such language, the legislative history adds support to the director's language. Congress's purpose in enacting VAWA of 1994 was, in part, to "permit [] battered immigrant women to leave their batterers without fearing deportation." H.R.Rep. No. 103-395. The same House Report explains the purpose of allowing an abused spouse to self-petition: "[t]he purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse." *Id.* Accordingly, while the director's language may have overreached, we do concur with his ultimate determination; the petitioner's claims are insufficient to establish a claim of battery or extreme cruelty.

While we do not dispute the petitioner's claims regarding her spouse's drug abuse, the record does not reflect that the petitioner is the type of battered immigrant woman with whom Congress was concerned with protecting. There is no indication that the petitioner's actions were used as "a means to control" or abuse the petitioner or to prevent her from accessing the immigration process but rather, his actions in disappearing, stealing money and possessions, being untrustworthy and unreliable, are all the result of his drug addiction.

Based upon the above discussion, we concur with the final determination of the director that at the time of his decision, the record was not sufficient to establish that the petitioner had been battered or subjected to abuse by her spouse. The petitioner's appellate submission does not overcome this finding.

Despite our support of the director's findings, however, the director's decision cannot stand because of his failure to issue a Notice of Intent to Deny to the petitioner prior the issuance of the denial. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) 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.

Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a notice of intent to deny as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

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 which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.