



U.S. Citizenship
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FILE: [REDACTED]
EAC 05 067 51903

Office: VERMONT SERVICE CENTER

Date: DEC 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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 because the petitioner did not establish that he was battered by or subjected to extreme cruelty by his spouse.

The petitioner, through counsel, submits a timely appeal.

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 or a child of 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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which 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 further explicated 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Dominican Republic who indicates that he entered the United States on January 10, 1990, without inspection. On October 13, 1994, the petitioner married C-J-¹, a U.S. citizen, in New York City, New York. The petitioner filed the instant Form I-360 on January 5, 2005.² On June 30, 2005, the director requested the petitioner to submit further evidence of, *inter alia*, the requisite battery or extreme cruelty. The petitioner timely responded to this request. On October 19, 2005, the director denied the petition, finding that the petitioner did not demonstrate that his spouse battered him or subjected him to extreme cruelty during their marriage.

On appeal, counsel claims that "the totality of the documentary evidence" establishes the petitioner's eligibility and that the director erroneously required "independent corroboration" of the claimed abuse. Upon review, while we partially concur with counsel's argument, we do not find that the director's ultimate determination has been overcome on appeal. Nonetheless, the case 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).

With his initial submission, the petitioner submitted no evidence in support of his claim of abuse. Although the petitioner submitted copies of medical reports, the reports do not describe any injury to the petitioner or treatment thereof and provide no information which would establish that the reason for the petitioner's visit to the hospital was due to battery or abuse perpetrated against him by his spouse.

In response to the director's June 30, 2005 request for evidence, rather than submitting his own personal statement documenting specific incidents of abuse and describing the alleged abuse in detail, the petitioner submitted an assessment from Irene Torres, LCSW-R, and two affidavits from friends. In the assessment, which

¹ Name withheld to protect individual's identity.

² The record also contains an approved Form I-130, Petition for Alien Relative, filed in the petitioner's behalf by his citizen spouse as well as a previously filed Form I-360 Battered Spouse petition which was withdrawn by the petitioner.

was based upon a single session with the petitioner, [REDACTED] provides the following information as related to her by the petitioner:

On about July 1994, he met his legal wife, [C-J]. He is unable to remember the exact date they met but states they courted for three months and were married on 10/13/94. The patient states the relationship was stable for about eight months before problems began. He described his wife as becoming insecure and verbally abusive. She was aggressive and called him foul names . . . She often insulted his mother and verbally degraded him as a man. She became physically aggressive and on one occasion took a stick and hit him on the arm. On another occasion she threw him out of the apartment and left him homeless. She often abandoned the home and came back. He reports that she often drank beer . . . [The petitioner] claims that about one year ago he discovered that his wife was being unfaithful and had brought another man into their home.

[REDACTED] also indicates that the petitioner previously sought psychiatric treatment. However, she indicates that the petitioner sought treatment due to his "wife's infidelity," rather than being the victim of any physical or psychological abuse. We note that the record does not contain any information related to the petitioner's prior treatment.

The affidavits submitted on the petitioner's behalf indicate that the petitioner's spouse had "becomed [sic] a problem in his relationship and may be jeopardizing his marriage," and that there has been "some friction between them lately . . ." Neither statement supports the petitioner's claim of abuse or makes any mention of any abusive incident in the marriage.

In her decision, the director noted the petitioner's failure to submit a personal statement detailing his claims of abuse as well as the lack of detail regarding abuse in the affidavits submitted by the petitioner's friends. In addition, the director's decision was based, in part, on the finding that the petitioner failed to provide any corroborating evidence to support his claim. This finding has no basis in the regulation. While the regulations at 8 C.F.R. §§ 103.2(2)(iii), 204.1(f)(1), 204.2(c)(2)(i) encourage the submission of primary evidence, there is no regulatory requirement that corroborating evidence be submitted. Accordingly, we withdraw the director's finding in this regard.

As discussed above, the record contains no documentary evidence to establish the petitioner's claim of abuse. The sole testimonial evidence submitted by the petitioner consists of the single assessment of [REDACTED] which contains general descriptions of the petitioner's claims of abuse and the affidavits from the petitioner's friends which contain no mention of physical abuse or extreme cruelty. Accordingly, we find this evidence does not carry sufficient weight to establish that his spouse battered or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) 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 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 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.