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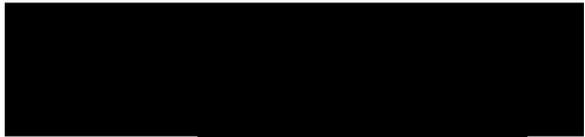
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUN 01 2006
EAC 05 064 53681

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:

SELF-REPRESENTED

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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the 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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.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 is a native and citizen of Guyana who is seeking 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 August 2005, finding that the petitioner had failed to establish that she was battered by or subjected to extreme cruelty by her citizen spouse.

The petitioner filed a timely appeal dated September 12, 2005, with additional evidence.

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 United States 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.

Further, 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

According to the evidence in the record, the petitioner married United States citizen [REDACTED] on June 26, 2000, in Guyana. The petitioner entered the United States on September 3, 2003, as a K-3 nonimmigrant. The petitioner filed the instant Form I-360 on December 30, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage. Without the issuance of a notice of intent to deny (NOID) as required by the regulation at 8 C.F.R. § 204.2(c)(3)(ii), the director denied the petition on August 10, 2005, finding that the petitioner failed to establish that she had been battered by or subjected to extreme cruelty by her spouse.

The regulation at 8 C.F.R. § 204.2(c)(3)(ii), states:

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.

The petitioner submits a timely appeal dated September 12, 2005, and offers additional evidence on appeal. It is noted that in cases where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO does not usually accept evidence offered for the

first time on appeal. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In this instance, however, because the petitioner was not provided with the NOID as required by regulation, we have reviewed the petitioner's appellate submission in order to determine whether such evidence overcomes the director's stated grounds for denial and could be sustained without remanding to the director for further action. As discussed in the decision, however, upon review we concur with the decision of the director and additionally find that the petitioner's appellate submission does not overcome the director's findings.

The petitioner's initial claim of abuse consisted of the allegation that her spouse had an affair and left her when she was five months pregnant. The petitioner had also submitted a statement from a social worker who indicated that the petitioner reported that her spouse was "verbally abusive to her on more than one occasion" and that he abandoned the petitioner and took their 14-year old daughter to an undisclosed location. In his decision, the director noted inconsistencies between the petitioner's statements and the statements made by the social worker and found that such documentation lacks "specific detail" and does not cite specific instances in which the petitioner was battered or subjected to extreme cruelty.

In response to the director's request for evidence, dated May 12, 2005, the petitioner made further claims of abuse and provided additional statements from family members and acquaintances.

In the statement provided by [REDACTED] a friend of the petitioner, [REDACTED] indicated that "as a couple, they got along very well," that she observed the petitioner's spouse to be "very caring of his children and wife," that they were "inseparable" and she was "shocked to hear that [the petitioner's spouse] moved out and left [the petitioner] during the early stages of their pregnancy because [she] thought it was planned." In his decision, the director noted that although [REDACTED] indicated the petitioner did not have money of her own, [REDACTED]'s statement was "too vague to conclude" that the petitioner was subjected to extreme cruelty.

The petitioner's father-in-law indicated that the petitioner's spouse "provided care of [the petitioner and her child] financially" while he was in the United States and the petitioner remained in Guyana. The father-in-law further stated that currently, the petitioner's spouse sends "a small amount of money for the petitioner's second child," and that the petitioner's spouse took their oldest daughter to live with him. Finally, the father-in-law claimed that the petitioner's spouse "refused to sign the hospital papers confirming him as [the second child's] father and has "refused to process" the petitioner's immigration papers. In his decision, the director noted that the father-in-law's statement regarding the dates the petitioner and her spouse lived with him conflicted with the dates indicated by the petitioner. The director also noted that the father-in-law's statement regarding the petitioner's spouse's refusal to sign the hospital papers was contradicted by the fact that the spouse's name was contained on the child's birth certificate. Based upon these inconsistencies, the director found the father-in-law's statement to be unreliable and not sufficiently credible.

In the statement provided by [REDACTED] a friend of the petitioner, [REDACTED] stated that the petitioner and her spouse lived together "for a short while, then he got her pregnant, during this time he abandon [sic] her and went to live with another woman." The director found this statement to be "too general in nature" to establish a claim of abuse and that it was not based upon any first hand knowledge.

The director also found the statement provided by [REDACTED] the petitioner's sister-in-law, to be general in nature and not based upon any first hand knowledge. The director found [REDACTED] statement, which included the claim that the petitioner would "confide in [her that her spouse] didn't want

anything to do with the baby,” that he was still seeing his ex-girlfriend and ultimately “abandoned his family,” did not indicate that she “was an eyewitness to any incidents of abuse” or that she “knew sufficient details about any incidents of battery or extreme cruelty.”

Finally, the director found the statement from [REDACTED], a friend of the petitioner, was vague and not sufficiently reliable. In her statement, [REDACTED] indicated that although the petitioner’s spouse was “initially motivated to create a positive and healthy environment for his family,” he started to “become bipolar,” “stay out at nights, leaving his newly pregnant wife at home,” and insisting that an “abortion be performed immediately.” In determining that her statement was vague, the director noted that [REDACTED] failed to identify her relationship with the petitioner and failed to indicate that she was an eyewitness to the claimed events. The director further determined that the statement lacked credibility based upon the fact that [REDACTED]’ contention that the petitioner’s spouse “refuses to send any money” for his wife or child was contradicted by the petitioner’s own statement, and the statements from the petitioner’s sister-in-law and father-in-law.

In her second statement, the petitioner indicated that after her pregnancy, her spouse “had become a different person.” She stated that her spouse wanted nothing to do with her or the unborn baby and “was very stern and aggressive” with his request to abort the baby. After the birth of the baby, the petitioner states that her spouse sent her money, but that it was not “consistent.” Regarding the claims made by the petitioner in response to the request for evidence, in his denial the director noted that the petitioner had failed to make any allegations of battery and that her claim appeared to be based solely upon extreme cruelty. The extreme cruelty claim is based upon the allegation that her spouse said he would not assist with the petitioner’s immigration papers if she did not have an abortion, and that her spouse had a girlfriend and abandoned the marriage. The director concluded his decision finding that from the documentation submitted in support of the petition, “the nature and extent of the alleged abuse” could not be determined and that it was unclear whether the petitioner’s spouse’s behavior was “an isolated incident or part of an overall pattern of behavior meant to control and intimidate” the petitioner.

On appeal, as evidence to establish her claim of abuse, the petitioner submits a third statement, a statement from her oldest daughter, and statements from the petitioner’s sister-in-law and mother-in-law. In her third statement, the petitioner describes a single incident in which she and her spouse were arguing over aborting their unborn child when the petitioner’s spouse began “hitting [her] bedroom door,” and grabbed [her] arm and started pulling [her] out of the room saying that we were going to have the abortion now.” This incident is also described by the petitioner’s mother-in-law and sister-in-law in their statements. As an explanation for why this incident had not been discussed with the evidence submitted at the time of the initial filing or after the director’s specific request for evidence regarding the petitioner’s claim of abuse, the petitioner’s sister-in-law states:

I understand that she didn’t mention any abuse. Knowing my father, he has always taken Mark’s side in this.

* * *

I did not write a letter in support of her before because dad was handling things and he absolutely refused to have any of talk about [REDACTED] in a “bad” way.

While this statement may explain why the petitioner’s in-laws were reluctant to speak out against the petitioner’s spouse, it does not explain the petitioner’s failure to mention this incident prior to the appeal.

Although the petitioner indicated that her spouse “was very stern and aggressive,” she did not provide any details regarding this specific event.

On appeal, the petitioner again alleges that her spouse mistreats their oldest daughter and refuses to let them see or talk to each other. In the statement from the petitioner’s daughter, the daughter indicates that she is sometimes scared of her father and that her father doesn’t want her to see her mother. Despite these claims, however, the petitioner has also submitted evidence on appeal that on two separate occasions, the Harford County Department of Social Services indicated that the petitioner’s allegations against her spouse were “deemed not sufficient and/or not appropriate to warrant a Child Protective Services Investigation.”

The petitioner also submits a copy of a document from the Circuit Court for Baltimore County indicating the petitioner’s spouse’s violation of probation regarding his failure to attend a domestic violence referral program. However, in the statement submitted by the petitioner on appeal, the petitioner explains that her spouse’s arrest for domestic violence was during a prior relationship, and was not related to the petitioner. Accordingly, this document is not considered evidence that the petitioner has been battered by or subjected to extreme cruelty by her spouse.

While we do not dispute the fact that the petitioner’s spouse abandoned her and left her dependent upon her in-laws because his “support” payments are not sufficient to cover their needs, the petitioner has not established that such facts are tantamount to a claim of extreme cruelty. Accordingly, we concur with the decision of the director that the petitioner has failed to establish that she has been battered by or subjected to extreme cruelty by her spouse. However, as previously noted, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a NOID 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.