

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

B9

PUBLIC COPY



FILE: [Redacted]
EAC 05 027 52972

Office: VERMONT SERVICE CENTER

Date: JUL 12 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 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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.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 Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director denied the petition on September 29, 2005, finding that the petitioner had failed to establish that she was battered by or subjected to extreme cruelty by her permanent resident spouse.

The petitioner, through counsel, filed a timely appeal on November 1, 2005.

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, 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 lawful permanent resident 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 lawful permanent resident Roberto Castillo on October 24, 2000, in San Diego, California. The petitioner filed the instant Form I-360 on November 4, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her permanent resident spouse during their marriage.

The petitioner's initial claim of abuse consisted of numerous allegations of abuse that occurred prior to the petitioner's marriage. Both the statute and the regulation are clear that in order to establish a claim of abuse, the abuse must have occurred *during* the marriage. The petitioner cannot establish eligibility based upon alleged abuse that occurred when the petitioner was not married to the purportedly abusive spouse.

As it relates to the alleged abuse during the marriage, in her initial statement, the petitioner claimed that her spouse called her names, had an affair, and went on vacation without her. In her second statement, the petitioner claimed that her spouse would "criticize her appearance" and insult her cooking. The petitioner also claimed that her spouse would not give her money for gas, left the home without telling the petitioner where he was going, and that she had "to give in" each time her spouse wanted to have "sexual relations."

The affidavit from the petitioner's neighbor [REDACTED] indicates that the petitioner's spouse "used hurtful words," "threatened her and refused to continue with their immigration papers," and "doesn't regularly

give her money.” Friends of the petitioner claim that the petitioner told them about “her money problems and her psychological abuse” and her husband’s affair with another woman. The petitioner’s sister claims the petitioner’s spouse would insult her about her weight, would not help her monetarily, and had an affair. The petitioner’s daughter claimed that her stepfather did not sleep at the house very often, “didn’t have any money to give my mom for us to eat,” and alludes to the fact that her father had an affair. The petitioner’s daughter also recounted an incident in which she saw that the petitioner “had a black eye that was swollen.” It is noted that the petitioner does not allege any physical abuse occurring during her marriage.

In addition, the petitioner submitted a letter from her children’s student support assistant who indicates that the petitioner’s children were placed into the school’s program because they were “not very active or social with other students,” had “low self-esteem issues,” “attention span,” and “aggressive behavior.” A second letter from the school’s lead counselor indicates that the petitioner was concerned about her sons’ “academic and emotional development,” because of “stressors” in her home. The letters do not provide any details regarding these “stressors” indicated by the petitioner.

Finally, the petitioner submitted a letter indicating her participation in the “Healing your Hurts” support group, certificates, for completing “Active Parenting for Today,” and a self-esteem improvement program. The letter and certificates provide no details regarding the claimed abuse.

In his decision, the director noted that none of the affiants indicated that they were actual witnesses to any of the claimed abuse and that their statements were based upon what was told to them by the petitioner. The director also determined that their claims, as well as those made by the petitioner, lacked detail and did “provide enough specific information to conclude that [her] spouse’s behavior meets the extreme cruelty standard.” Upon review, we concur with the director’s findings as we find the record insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her spouse and we find the petitioner’s claims regarding her “economic deprivation” and “social isolation” and the evidence in the record to be inconsistent.

First, in her initial statement, the petitioner claimed that her spouse said he had “the right to do whatever he wanted because he worked and I did not.” However, on the Form I-360, the petitioner indicates that she worked in order to provide for herself and her family. It is noted that the affidavits from the petitioner’s friends indicate that she was always searching for work. Second, although the petitioner also claimed that on occasions, she would be left without any money and had to ask friends to buy food and gas, we note that not any of the affiants who submitted statements on behalf of the petitioner mention that they ever bought food or gas for the petitioner. Further, on the affidavit for waiver of fee signed by the petitioner on August 31, 2004, under penalty of perjury, the petitioner indicated that her spouse paid \$250 per month toward groceries and \$845 toward rent. From the petitioner’s own statements, it is clear that her spouse contributed money to maintain their household, while the petitioner also had access to money and paid the bills that she could pay. While the petitioner and her spouse may have not made enough money to meet all their monthly expenses, such a fact does not establish that the petitioner was controlled economically by her spouse and subjected to extreme cruelty.

Regarding the petitioner’s claim of “social isolation,” there is no evidence that the petitioner’s spouse prevented her from seeing her family or friends. While she may not always have had money for gas to visit them, such a fact does not signify that the petitioner was socially isolated. The affidavits provided on the petitioner’s behalf indicate ongoing relationships with friends and relatives, one in which the petitioner’s friend indicated that whenever the petitioner seemed “stressed out,” the friend would invite the petitioner over for a cup of coffee.

The remaining claims, that the petitioner's appearance and cooking were "insulted," that her spouse went on vacation without the petitioner, and that he had an affair, are not sufficient to establish a claim of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's claims do not sufficiently demonstrate that she was the victim of any act or threat of violence, that she was forcefully detained by her spouse, that she was psychologically or sexually abused or exploited, or that her spouse's actions were a part of an overall pattern of violence. 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.

Despite our support of the director's findings, 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.