



U.S. Citizenship
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FILE: [REDACTED]
EAC 05 136 50797

Office: VERMONT SERVICE CENTER

Date: JUN 23 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:

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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 his wife battered or subjected him to extreme cruelty during their marriage.

On appeal, the petitioner submits a letter 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 Vietnam who entered the United States on April 10, 2003 as a nonimmigrant visitor (B-2). On June 12, 2003, the petitioner married [REDACTED] in California. On June 14, 2004, Ms. [REDACTED] filed a petition for divorce with the Orange County Superior Court of California. On April 11, 2005, the petitioner filed this Form I-360. On August 10, 2005, the director issued a notice explaining the deficiencies of the evidence submitted with the petition and requested the petitioner to submit additional evidence of, *inter alia*, Ms. [REDACTED] battery or extreme cruelty. The petitioner submitted additional evidence on October 11, 2005. On November 3, 2005, the director denied the petition because the record did not establish that Ms. [REDACTED] subjected the petitioner to battery or extreme cruelty. The petitioner timely appealed.

On appeal, the petitioner requests oral argument. He states that because he has had to present his case through the help of an interpreter, many thoughts, feelings, and description of events have gotten lost in translation or were not presented at all. Citizenship and Immigration Services (CIS) has sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). Although we recognize the linguistic difficulties the petitioner may face, the petitioner identifies no unique factors or issues of law to be resolved on appeal. We have considered the additional testimony submitted on appeal and we find that the written record of proceedings fully represents the facts and issues in this matter. The petitioner's request for oral argument is consequently denied.

We concur with the director's determination and find that the evidence submitted on appeal fails to establish battery or extreme cruelty. Nevertheless, the petition will be remanded because the director denied the petition before issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which 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.

Battery or Extreme Cruelty

As evidence of Ms. [REDACTED]'s battery or extreme cruelty, the petitioner initially submitted his own statement dated March 21, 2005 in which he reports that Ms. [REDACTED] daughter was verbally abusive to him and that Ms. [REDACTED] called him all sorts of names, forbid him to go out with his friends, told him to sever contact with his relatives, forced him to stay home and forbid him to work or go to school. The petitioner also expresses his belief that his wife had an extramarital affair because he heard her talking to other men on the telephone, after which she would go out at night and sometimes not return to their home. The petitioner states that he became depressed, resulting in his impotency and that Ms. [REDACTED] forced him to take Viagra against his will and would curse and kick him out of the house when he was impotent. The petitioner explains that he went to stay with his sister and on June 14, 2004 received notice that Ms. [REDACTED] had petitioned for divorce. The petitioner reports becoming sick with stress and worry.

The petitioner also submitted statements from his nephews, [REDACTED] and [REDACTED], who state that they were aware of Ms. [REDACTED]'s abuse, abandonment and petition for divorce. In response to the director's request for further evidence, the petitioner submitted an additional affidavit from his nephew, [REDACTED] and Ms. [REDACTED], his sister. Both [REDACTED] and Ms. [REDACTED] state that they have personal knowledge of the petitioner's marriage and that they witnessed the abuse he suffered while living with Ms. [REDACTED]. Neither affiant describes any specific incidents of abuse that they witnessed.

On appeal, the petitioner submits a second personal statement dated November 12, 2005, in which he specifies the derogatory names that Ms. [REDACTED] called him. The petitioner also states that by forbidding him to go out with his friends, Ms. [REDACTED] jeopardized his health and welfare because his friends wanted to help him learn how to drive, enroll in school, get a job and see a doctor. The petitioner further explains that Ms. [REDACTED] did not provide enough money to pay all their bills and he had to borrow money. The petitioner adds that Ms. [REDACTED] kicked and slapped him many times and threw things at him during their arguments. The petitioner explains, "being a timid man in a strange new land, ashamed and dishonored, I neither had the courage nor the heart to turn-in the woman that I loved."

The record does not adequately corroborate these statements. Evidence submitted below contradicts the petitioner's assertion on appeal that Ms. [REDACTED] prevented him from learning how to drive. The petitioner previously submitted copies of his California Driver's License and automobile insurance card, both of which were issued during the time he resided with Ms. [REDACTED]. The petitioner does not explain this discrepancy.

On appeal, the petitioner submits a letter dated November 12, 2005 from [REDACTED], General Secretary of the Vietnamese Community of Southern California, who states that the petitioner has been

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treated by the association's primary physician since August 2005 for depression, arthritis, liver and kidney problems and erectile dysfunction. Mr. ■■■■ also states that the petitioner "complained of psychological trauma as a victim of domestic violence and abuse during his marriage to [Ms. ■■■■]. He is enrolled in our weekly counseling session . . ." Yet the petitioner submitted no corroborative evidence that he has received counseling, such as verification from the counselor and his or her assessment of his condition.

On appeal, the petitioner also submits a letter from ■■■■ D.O. dated September 24, 2005, who states that he examined the petitioner and diagnosed him with major depression. Dr. ■■■■ provides no discussion of the petitioner's condition and does not state that Ms. ■■■■ alleged battery or extreme cruelty was a contributing factor to his illness.

The present record fails to establish that Ms. ■■■■ 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 letters and affidavits of the petitioner's nephews and sister provide no detailed description of any incidents of abuse that they witnessed or significant changes in the petitioner's physical and mental health which they ascribe to Ms. ■■■■ behavior. Hence, their testimony is of little probative value in establishing battery or extreme cruelty. Mr. ■■■■ and Dr. ■■■■ confirm that the petitioner has physical and mental health problems, but their letters fail to establish that Ms. ■■■■ battery or extreme cruelty was the principal or a contributing cause of his illnesses.

Accordingly, the present record does not demonstrate that Ms. ■■■■ subjected the petitioner to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), 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.