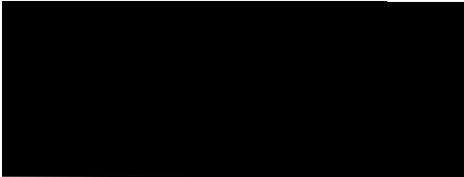


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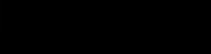


**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



*Ba*

FILE:  EAC 04 180 52469

Office: VERMONT SERVICE CENTER

Date: **MAY 04 2006**

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:



**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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of Brazil who was admitted to the United States as a nonimmigrant visitor (B-2) on December 18, 1990 with authorization to remain in the United States until June 17, 1991. On August 11, 1995, the petitioner married [REDACTED] a U.S. citizen. On September 8, 2003, Citizenship and Immigration Services (CIS) denied the Form I-130 petition filed by [REDACTED] on the petitioner's behalf and denied the petitioner's Form I-485 application to adjust status.

On that same date, CIS served the petitioner with a Notice to Appear for Removal Proceedings. The petitioner's next hearing before the Immigration Judge is scheduled for May 11, 2006.

On May 29, 2004, the petitioner filed a Form I-360 seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien subjected to battery or extreme cruelty by her United States citizen spouse. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a notice on January 26, 2005 requesting evidence of the legal termination of the petitioner's prior marriage and of the requisite battery or extreme cruelty. On March 23, 2005, counsel requested and was granted an additional 60 days to respond to the notice. On June 16, 2005, counsel again requested an additional 60 days to submit the requested evidence. On August 2, 2005, the director denied counsel's second extension request and denied the petition because the record failed to establish that the petitioner had a qualifying relationship with [REDACTED] was eligible for immediate relative classification based on such a relationship, or was subjected to battery or extreme cruelty by [REDACTED] during their marriage.

On appeal, counsel submits a brief, a letter from a domestic violence counselor and proof of the petitioner's divorce from her prior husband in Brazil. The latter evidence establishes that the petitioner had a qualifying relationship with [REDACTED] and was eligible for immediate relative classification based on that relationship. However, counsel's claims and the counselor's letter do not establish that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage. Nonetheless, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

\* \* \*

(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.

*Qualifying Relationship and Eligibility for Immediate Relative Classification*

In this case, the director denied the petition, in part, because the petitioner did not submit proof of the legal termination of her prior marriage before her marriage to [REDACTED]. On appeal, the petitioner submits a copy of the divorce judgment, which terminated her prior marriage in Brazil on October 24, 1990. The petitioner has thus overcome this basis for denial and established that she had a qualifying relationship with [REDACTED] and was eligible for immediate relative classification based on that relationship, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(ii).

*Battery or Extreme Cruelty*

As evidence that [REDACTED] subjected her to battery or extreme cruelty during their marriage, the petitioner submitted her own affidavit, affidavits from her daughter and neighbor, a copy of a bank account withdrawal receipt, and two letters from the Massachusetts Registry of Motor Vehicles indicating that four arrest warrants had been issued for [REDACTED]. The petitioner states that [REDACTED] abused alcohol, made her pay all or most of the bills, lied about withdrawing money from their bank account, had a girlfriend, was in jail several times and that she believes he robbed her house after he moved out. [REDACTED], the petitioner's daughter, largely repeats or summarizes her mother's statements. [REDACTED], the petitioner's neighbor, states that he knows that the petitioner's apartment was broken into and that he believes [REDACTED] was the perpetrator. The bank account withdrawal receipt shows that [REDACTED] withdrew \$725 from their joint account on June 29, 1998. The Massachusetts Registry of Motor Vehicles letters state that [REDACTED] driver's license will be suspended indefinitely due to four outstanding arrest warrants issued in 1996 and 1997.

We concur with the director's determination that this evidence does not establish that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not state that [REDACTED] ever physically assaulted her or threatened to use violence against her. [REDACTED]'s behavior, as described by the petitioner and her daughter, does not amount to psychological abuse and the record does not indicate that [REDACTED] actions were part of a pattern of overall violence directed at the petitioner.

On appeal, the petitioner submits a letter dated August 11, 2005 from [REDACTED] Counselor and Advocate with Respond, Incorporated. [REDACTED] states:

[The petitioner] is currently receiving services at RESPOND. RESPOND, Inc. is an emergency program that provides services to battered women and their children. On [sic] our counseling sessions we will discuss the nature and causes of Domestic Violence and the different alternatives in order to have a life free from violence. (Capitalization in original).

[REDACTED] provides no further details and does not state what specific kinds of services the petitioner is receiving from her organization. [REDACTED] letter provides no substantive information or analysis of

the petitioner's individual situation and condition and is of little probative value in establishing battery or extreme cruelty. The petitioner submitted no other documentation of [REDACTED]'s alleged abuse of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and she does not explain why such documents do not exist or are unobtainable.

Accordingly, the present record fails to demonstrate that [REDACTED] subjected the petitioner to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi), 204.2(c)(2)(iv).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which 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.

The case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her 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.