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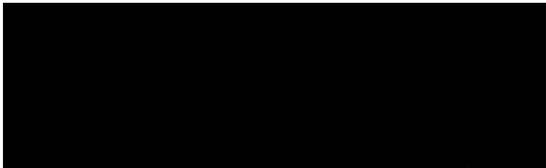
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B9



FILE:



Office: VERMONT SERVICE CENTER

Date:

EAC 05 201 53706

OCT 03 2008

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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.

On July 8, 2005, 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 his United States citizen spouse.

The director denied the petition because the petitioner had not established that he was battered by or subjected to extreme cruelty by his U.S. citizen spouse during their marriage.

On appeal, the petitioner submits additional evidence.

For the reasons discussed below, we concur with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty and find that the evidence submitted on appeal does not overcome this basis for denial. However, 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) further explicates the statutory requirements and 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 is a native and citizen of Kenya who entered the United States as a nonimmigrant visitor (B-2) on March 25, 2000 and was granted authorization to remain in the United States until September 24, 2002. On May 9, 2002, the petitioner married K-M-¹ a U.S. citizen, in Hillside, New Jersey. On December 6, 2002, K-M- filed a Form I-130 on the petitioner's behalf. The petitioner concurrently filed a Form I-485 application to adjust status with the Form I-130.

The issue to be addressed in this proceeding is whether the petitioner established that his U.S. citizen spouse abused him.

Finding the evidence insufficient to establish a prima facie case, on July 15, 2005, the director asked the petitioner to submit additional evidence to establish among other things, that he had suffered battery or extreme cruelty perpetrated by his wife. The petitioner responded to the notice. On September 28, 2005, the director asked the petitioner to establish that he had resided with his wife, entered into the marriage in good faith and that his wife had subjected him to battery or extreme cruelty. The petitioner requested an extension of time to respond to the request and submitted additional evidence on November 2, 2005.

The evidence relating to abuse consists of the following:

- The petitioner's statements dated February 24, 2006 and November 1, 2005.

¹ Initials are used to protect the petitioner's spouse's confidentiality.

- A letter from the petitioner's bank verifying that a transfer of \$201 was made from the petitioner's personal individual account to his joint account on April 16, 2004.
- A letter from [REDACTED] stating that the petitioner has experienced stress and anxiety, which could be the cause of the petitioner's heart troubles.
- Newspaper clippings.

In his statements, the petitioner complained in general terms about his wife's "violent outbursts" and "name calling." He said that he was shocked to come home and find his wife smoking marijuana with her friends. He said that she slipped out of the house at night and did drugs. He said that she refused to work yet demanded money from him. He said that a friend of his wife posed as the petitioner and transferred money from his personal account to their joint account. He said that once she ran after him, brandishing a baseball bat, but missed him and hit his car. The AAO concurs with the director that the conduct described does not rise to the level of battery or extreme cruelty as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, the petitioner said that his wife once pushed him aside, he tripped and fell "hurting his hand terribly." The petitioner failed to state exactly when this incident occurred. Although not required, the petitioner failed to submit corroborating evidence of his hand injury.

One of the newspaper clippings contains an article that describes a high level of crime at the intersection of Springfield and [REDACTED] (the petitioner's neighborhood). The other clipping mentions the petitioner's wife by name indicating that she had been arrested for conspiring to commit theft. The news articles do not demonstrate that the petitioner was harmed directly by his wife's criminal activities as he alleged. The petitioner was not the victim of his wife's attempted theft.

It is noted that [REDACTED] does not specifically describe the petitioner's heart troubles or definitively attribute the problem to his marital situation.

It is further noted that the bank did not state that the petitioner had reported that someone had posed as him to transfer funds from his personal individual account to his joint account.

The petitioner states that he repeatedly paid bills for his wife, but he does not report that she ever used or threatened to use violence against him if he did not do so. The record does not persuasively establish, however, that the financial and marital problems caused by K-M- were part of an overall pattern of physical violence or amounted to psychological or sexual abuse.

The record is also devoid of any documentation of alleged extreme cruelty of the types described in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The petitioner submitted no evidence that he ever called the police or took legal steps to end his wife's alleged abuse. The petitioner reports experiencing stress, but

the record does not indicate that he ever sought mental health treatment for these problems or that he sought assistance from religious figures or social service agencies. The petitioner also does not explain why he did not seek help in dealing with his wife's alleged abuse. For example, the petitioner does not state that cultural barriers or financial limitations prevented him from calling the police, seeking assistance from other authorities, or obtaining mental health treatment for the effects of his wife's alleged extreme cruelty.

The petitioner has not established that he was battered or subjected to extreme cruelty by his United States citizen spouse. Based on the current record, the petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

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.

Consequently, the case must 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.