



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 05 226 52476

Office: VERMONT SERVICE CENTER

Date: MAR 20 2007

IN RE: Petitioner: [REDACTED]

PETITION: Petition for 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 appeal will be dismissed.

The petitioner seeks immigrant classification under 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 because the petitioner did not establish that his former wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a statement and photographs of his former wife and himself.

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 or a child of 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).

An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act also states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which 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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala who entered the United States on February 15, 1993 without inspection. On July 2, 1999, the Orlando, Florida Immigration Court ordered the petitioner removed from the United States pursuant to section 212(a)(6)(A)(i) of the Act, as an alien present in the United States without having been admitted or paroled. The petitioner first married L-R,<sup>1</sup> a citizen of the United States, on April 3, 2000 in Florida and the petitioner states in these proceedings that the former couple divorced in November 2001. The former couple remarried on November 25, 2002 in Florida and again divorced on November 2, 2005. The petitioner filed this Form I-360 on August 11, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty. The petitioner timely responded with additional evidence. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, battery or extreme cruelty. The petitioner timely responded with further evidence. The director denied the petition on August 31, 2006 for lack of the requisite battery or extreme cruelty and the petitioner timely appealed.

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<sup>1</sup> Name withheld to protect individual's identity.

On appeal, the petitioner asserts that the evidence submitted below established that his former wife subjected him to extreme cruelty. We concur with the director's determination. The petitioner's statements on appeal fail to overcome the ground for denial.

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's statements dated August 27, 2003, February 27 and July 18, 2006 submitted below and his September 28, 2006 letter submitted on appeal;
- A mortgage loan statement dated May 14, 2004 and addressed to the petitioner's former wife and her daughter for the former couple's marital home;
- A quit-claim deed dated January 27, 2003 and signed by the petitioner granting his house to his former wife; and
- A quit-claim deed dated February 9, 2004 and signed by the petitioner's former wife granting the house back to the petitioner.

In his statements, the petitioner reports that his former wife had an extramarital affair and that his wife's daughter sold his television to his former wife's boyfriend. The petitioner explains that after he married his former wife the first time, he moved into her house and rented his house. The petitioner reports that in November 2000, his former wife collected the rent for his house, deposited the check in her account and left him without money to make his mortgage payment for that month. In January 2001, the petitioner states that he agreed to buy another house with his former wife and borrowed \$1,500 from his daughter for the down payment, but that at the closing, his former wife's daughter appeared and signed the closing papers with his former wife instead of him. In July 2001, the petitioner reports that his former wife made him and his daughter leave the house because she was having a party and did not want them to be there. In November 2001, the petitioner states that his former wife invited him to dinner after work, but instead took him to an office to sign divorce papers.

Although they were divorced, the petitioner reports that his former wife continued to call him to ask for money or help with her house. In November 2002, the petitioner explains that his former wife asked for his forgiveness and the couple remarried. In January 2003, the petitioner reports that his wife took him to a financial institution to open a joint checking account and he signed a sheet of paper that was folded in half. The petitioner later discovered that he had signed a quit-claim deed to his house, which transferred the title to his former wife. When he confronted his former wife, the petitioner states that she agreed to transfer the house back to him.

In July 2003, the petitioner states that he had surgery on his leg and that during his hospital stay his former wife picked up his paycheck and did not give it to him. After his discharge, the petitioner reports that his wife left him alone and he had to rely on the help of his daughter and a visiting nurse. The petitioner further states that his former wife refused to co-sign an automobile loan for him, although he had done so for her, and also refused to jointly file federal income taxes with him during

the last two years of their second marriage. The petitioner explains that in January 2005, his former wife asked him for \$5,000 and when he was unable to give her the money, she said she was going to get another man and subsequently filed for divorce.

The petitioner's statements fail to establish that his former wife subjected him to battery or extreme cruelty during their second marriage pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not indicate that his wife ever threatened him with violence and his statements fail to demonstrate that her nonviolent behavior constituted psychological abuse.

The remaining, relevant documents corroborate the petitioner's statement of events, but fail to demonstrate that his former wife subjected him to extreme cruelty during their marriage. The mortgage loan statement is addressed to the petitioner's former wife and her daughter, but the statement alone does not establish that they forcibly prevented the petitioner from signing the closing documents or otherwise defrauded him of an interest in the property. The quit-claim deeds show that the petitioner transferred his house to his former wife in January 2003 and that his former wife transferred the house back to him in February 2004. The quit-claim deeds do not, however, establish that the petitioner's former wife forced him to sign the first quit-claim deed through deceit. The petitioner submitted no other evidence of his former wife's allegedly extreme cruelty of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and in the director's RFE and NOID. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The petitioner has not demonstrated that his former wife subjected him to battery or extreme cruelty during their second marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.