U.S. Department of Homeland Security
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Washington, DC 20529

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PUBLIC COPY

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 11 2005

IN RE: Petitioner:
Beneficiary: [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:

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native of Vietnam and a citizen of Sweden who is 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 the battered spouse of a lawful permanent resident of the United States.[1]

On November 10, 2004, the director denied the petition, finding that the petitioner failed to establish that he had resided with the resident spouse, and that he had been battered or the subject of extreme cruelty perpetrated by his spouse.

On appeal, the petitioner submits additional evidence and indicates that she would submit a brief and/or additional evidence within 30 days of filing the appeal. More than 3 months have lapsed since the date of the filing of the appeal and nothing more has been submitted to AAO for the record.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

> (aa) the marriage or the intent to marry the United States citizen 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;

[1] It is noted that an attorney who is currently the subject of an interim suspension in the State of Arizona represents the petitioner. See March 23, 2005 judgment SB-05-0008D). Therefore, the AAO may not recognize counsel in this proceeding.

> (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.

According to the evidence on the record, the petitioner's U.S. citizen father, [redacted] filed a Form I-130 petition on the petitioner's behalf on July 15, 1992, which was approved on August 27, 1992. The petitioner entered the United States on July 14, 1995 as a nonimmigrant with a visa waiver. On March 30, 1998, the petitioner filed an affirmative application for asylum. His asylum application was denied and referred to the immigration court. On March 13, 2001, the petitioner filed a Form I-485 Application to Register Permanent Residence or Adjust Status. In a decision dated November 29, 2001, an immigration judge granted the petitioner's application for adjustment of status to that of a lawful permanent residence under section 245(i) of the Act, 8 U.S.C. § 1255(i), based upon an approved petition as an unmarried son.[2] Legacy Immigration and Naturalization Service (now Citizenship and Immigration Services) filed a motion to reconsider, which the immigration judge denied. Citizenship and Immigration Services (CIS) appealed the immigration judge's decision. The petitioner wed lawful permanent resident [redacted] on May 28, 2002 in San Diego, California. On January 6, 2003, the Board of Immigration Appeals (BIA) sustained CIS' appeal, terminated proceedings and vacated the immigration judge's decisions dated November 29, 2001 and December 19, 2001. CIS placed the petitioner in removal proceedings again on March 26, 2003. On April 14, 2003, the petitioner filed a petition for writ of habeas corpus with stay of removal in the United States District Court for the District of Arizona. On April 16, 2003, a U.S. district judge granted the petitioner's motion for a temporary restraining order to stay removal. On July 7, 2004, the petitioner filed a Form I-360 petition, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his resident spouse during the marriage.

The first issue to be addressed is whether the petitioner has established that he has resided with his permanent resident spouse. The director found and the AAO concurs that the evidence is insufficient to establish that the petitioner had resided with his permanent resident spouse. The evidence consists of the following:

- A 2003 property tax statement addressed to the petitioner and his spouse at [redacted]
- A quitclaim deed dated July 21, 2002, conveying a community property interest in Lot 81, Trovare Unit 11, to the petitioner's wife.

[2] The petitioner was 34 years old at the time his adjustment application was granted.

- A 2004 and a 2005 property valuation addressed to the petitioner and his spouse at [redacted]
- Two joint bank account statements dated September 28, 2004 and October 27, 2004.
- An undated void check from the Bank of America.
- Joint tax returns for 2002 and 2003 addressed to the petitioner and his spouse at [redacted]
- A motor vehicle registration in the petitioner's name alone dated January 15, 2003.

According to the Form I-360 petition, the petitioner and his wife ceased to reside together on May 1, 2004. The bank statements post-date their separation so they are not evidence of a shared residence. A blank check is not evidence of cohabitation. In a notice of intent to deny the petition (NOID), the director informed the petitioner of the types of evidence he could submit to establish that he had resided with his spouse. The petitioner failed to submit joint mortgages or rental agreements. He failed to submit copies of insurance policies listing a common address for the petitioner and his spouse. He failed to submit utility bills listing a common address. The petitioner asserted that he and his wife resided together for approximately two years, yet he provided scant evidence of joint residence. The evidence is insufficient to establish that the petitioner and his wife resided together.

The next issue to be addressed in this proceeding is whether the petitioner established that he has been battered by or has been the subject of extreme cruelty perpetrated by his resident spouse. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he 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. The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

Because the petitioner furnished insufficient evidence to establish that he has been battered by, or the subject of extreme cruelty by his resident spouse, the director requested that he submit additional evidence on July 14, 2004.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including the evidence furnished in response to her requests for additional evidence. The discussion will not be repeated here. On October 28, 2004, the director notified the petitioner of her intent to deny the petition, finding the record insufficient to establish that the petitioner had resided with his spouse and that he had been battered by, or the subject of extreme cruelty by his resident spouse. The director granted the petitioner 60 days to submit additional evidence. The petitioner responded to the NOID on November 5, 2004, and again on November 12, 2004. On appeal, the petitioner asserts that the director erred by failing to consider the petitioner's second submission in response to the NOID. Counsel's assertion is not persuasive. According to the regulation at 8 C.F.R. § 103.2(b)(11), all evidence submitted in response to a request *must* be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the evidence on the record.

The evidence relating to the abuse is as follows:

- A VAWA checklist completed by the petitioner and submitted in support of the Form I-360 petition.
- The petitioner's letter dated November 30, 2004.
- A letter from [redacted] dated October 20, 2004 and notes of a medical examination performed on October 7, 2004.
- A letter from [redacted] dated November 9, 2004.
- A letter from [redacted] dated November 12, 2004.
- An undated letter from [redacted] Associates, indicating that the petitioner had been in counseling since September 31, 2004.

[redacted] letter is given no weight because it is undated. It is further noted that there are only 30 days in September.

[redacted] recommended marital or couple therapy for the petitioner and his wife. He also noted that the petitioner was proceeding with a divorce. He said that the petitioner told him that his wife phoned him "relentlessly," and yelled at him. The letter and notes prepared by Dr. [redacted] are based upon a one-session evaluation performed more than two years after the petitioner and his wife separated.

[redacted] stated that the petitioner's wife is "unstable mentally and emotionally. This instability has caused very abusive behavior toward [the petitioner]. [redacted] stated that she is a friend of the petitioner's family. She failed to state the basis for her conclusion that the petitioner's spouse was abusive. She provided no specific details of instances of abuse. [redacted] indicated that the petitioner had confided in her instances of abuse. Secondhand accounts of abuse are given less weight than first-hand accounts. The affidavits and evaluation are insufficiently specific as to the exact harm he suffered from his spouse.

The VAWA checklist provides no specific details about incidents of abuse.

The petitioner wrote that his wife insulted him and yelled at him. He said that his wife threatened to take their baby out of state and to deport the petitioner. The petitioner stated that his wife changed their baby's first and last names. He said that his wife was sexually critical, and demanding. He said that his wife was possessive of him and routinely went out every night from 5 until 7 pm.

Not all forms of marital discord rise to the level of battery and extreme cruelty. The harm complained of does not rise to the level described in the pertinent regulations.

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.

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. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The petitioner stated that he lost his job because his wife called him so frequently at work. In his own statement, the petitioner indicated that he had to sell his own nail salon because his wife, then girlfriend, called him so frequently at the salon that he lost customers. On the VAWA checklist, the petitioner indicated that he was given two warnings and was finally fired because his wife called him so frequently. The director brought this inconsistency to the petitioner's notice in her decision. The petitioner failed to address it on appeal. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the petitioner cites *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003) for the proposition that mental or psychological cruelty is tantamount to extreme cruelty. The AAO acknowledges that mental or psychological abuse may constitute extreme cruelty, but in the instant case, the petitioner has failed to establish that he was battered by, or subjected to extreme cruelty, by his resident spouse. The petitioner failed to establish that the facts in the instant case are in any way analogous to those in *Hernandez v. Ashcroft*, supra.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.