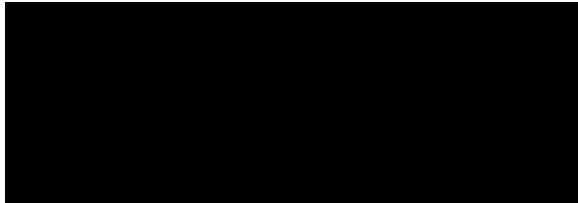




**U.S. Citizenship
and Immigration
Services**

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



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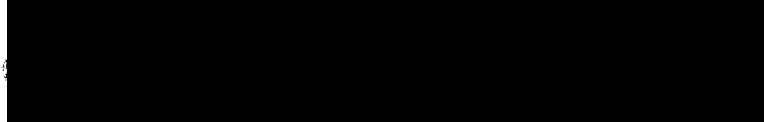
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Date: DEC 02 2005

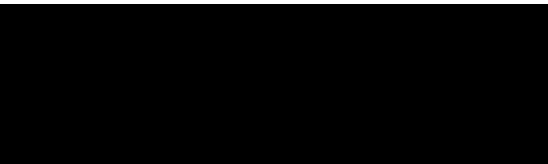
IN RE:

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.

A handwritten signature in black ink, appearing to read "D.P.W." or "D. P. WIEMANN".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic 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 United States citizen.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] 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;
- (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 information contained in the record, the petitioner wed United States citizen [REDACTED] on April 21, 1995 in Bronx, New York. On January 31, 1997, the petitioner's spouse filed a Form I-130 in the petitioner's behalf. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 petition was approved on March 1, 2001. However, the Form I-485 application was denied on that same date for abandonment.

On November 15, 2003, the petitioner filed the instant Form I-360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage. The petition was denied on February 28, 2005 based upon the director's finding that the petitioner failed to establish she had been battered or subjected to extreme cruelty by her citizen spouse.

The petitioner, through counsel, submits a timely appeal.

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.

Further, 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

At the time of filing, the director determined the petitioner submitted insufficient documentation to support her claim of abuse. In his request for evidence, issued on August 19, 2004, the director noted that the letters submitted on the petitioner's behalf did "not provide any specific information" and "do not indicate if they have any first-hand knowledge of the alleged abuse." Therefore, the director requested the petitioner to submit further evidence, to include:

- Reports and affidavits from: police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that you have sought refuge in a shelter for the abused.
- Photographs of your injuries, and affidavits from witnesses, if possible.
- A statement, in your own words describing the relationship with your abuser. Be as specific and detailed as possible, including an explanation of the type of abuse (e.g., verbal, social isolation, possessiveness, quality of life) suffered and the after-effects of the abuse.
- Affidavits from individuals who were present at the time the incident(s) occurred.

The petitioner responded to the director's request on September 22, 2004 by submitting a personal statement and three affidavits from acquaintances. On October 20, 2004 and November 8, 2004, the petitioner submitted several more affidavits from acquaintances.

The director reviewed the evidence contained in the record, including the evidence submitted in response to the director's request for evidence, and denied the petition based upon a finding that the evidence was not sufficient to establish that the petitioner had been battered or subjected to extreme cruelty by her citizen spouse.

On appeal, counsel for the petitioner submits a brief statement with no additional evidence. Counsel states that the petitioner submitted "enormous documentation" that she was subjected to extreme cruelty" and argues that the director failed to give "enough weight to the affidavits by the witnesses who all stated that the applicant had been abused and victimized by her husband."

In her statement, the petitioner indicates that shortly after the marriage her spouse "began to stay out late at night with his friends . . . [a]nd when he came home he came home drunk and would push me around and slap me." In addition, the petitioner claims that her spouse was verbally abusive and called her a "whore." We do not find the fact that the petitioner's spouse would stay out late or abuse alcohol as sufficient evidence to establish a claim of abuse in accordance with the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Further, as it relates to the petitioner's claims that she was pushed, slapped, punched and subjected to verbal abuse, we find the petitioner's statement does not contain sufficient detail to corroborate her claim. The petitioner does not describe any single incident in detail and the record contains no documentation such as photographs, medical documentation or police reports to corroborate her claims.

Although the petitioner submitted numerous statements from individuals who claim they witnessed the "physical, verbal, and psychological maltreatment" received by the petitioner, these statements also contain insufficient details to corroborate the petitioner's claims. For instance, while the affiants indicate that they witnessed abuse, they provide no details such as where the abuse occurred, when it occurred, why it occurred, or what type of abuse was involved (i.e., physical or verbal). Moreover, we note that at least three of the petitioner's supporting letters come from witnesses who live in Puerto Rico. Given the evidence in the record that the petitioner and her spouse resided together in New York and New Hampshire, without any further details in these statements, such as where and when the affiants witnessed the purported abuse, it is unclear how these affiants could have actually witnessed the alleged abuse.

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.