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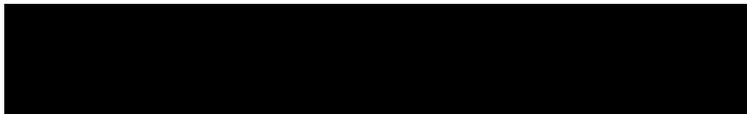


B9

FILE: 
EAC 04 055 52729

Office: VERMONT SERVICE CENTER

Date: DEC 05 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.

Robert P. Wiemann, Director
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 is a native and citizen of Jamaica who seeks 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 petition insufficient to establish the petitioner's eligibility, the director issued a Request for Evidence (RFE) on September 9, 2004 to which the petitioner timely responded. On March 30, 2005, the director denied the petition, finding that the evidence submitted initially and in response to the RFE failed to establish that the petitioner was battered or subjected to extreme cruelty by her U.S. citizen husband. Because we concur with the director's determination that the petitioner met all the other criteria, the only issue on appeal is whether the petitioner's husband subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits a four-page brief and asserts that the director's decision was erroneous and failed to fully consider all the evidence. Counsel's contentions do not overcome the deficiencies of the petition and the appeal will be dismissed.

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 he or she demonstrates that the marriage to the United States citizen spouse was entered into 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 spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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, 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 regulation at 8 C.F.R. § 204.2(c)(2) further 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 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.

In this case, the record indicates that the petitioner married [REDACTED], a U.S. citizen, on October 18, 1996. In her statement submitted with her RFE response, the petitioner explains, "The problems with my husband began because he had a severe drug problem. . . ." The petitioner states that her husband was arrested, convicted and incarcerated for criminal drug offenses and that shortly after they were married, her husband became "verbally abusive" towards her. She reports finding that some of her belongings were missing and that when she asked her husband if he stole them, he "verbally abuse[d] [her] severely further." The petitioner states that during her husband's imprisonment she was pregnant and had a miscarriage due to her stress. After her husband was released on bond, the petitioner reports that he stayed with her and she again noticed the disappearance of some of her possessions. When she confronted her husband, the petitioner states, "he began to start again with the threats and verbal abuse and at one time he threatened me with physical harm." The petitioner explains that her husband was imprisoned for 18 months and that after he was released on parole, "the situation got worse and the abuse continued and as a result I became severely depressed."

The petitioner does not describe in any detail her husband's "verbal abuse." She does not specify how he threatened her or why she found his threats credible. The petitioner also submits no medical records of her miscarriage or other evidence that this unfortunate loss was related to her husband's mistreatment. In addition, the petitioner submits no police reports concerning her missing or stolen property.

Other relevant evidence in the record fails to fully corroborate the petitioner's statement regarding her husband's behavior and its effects on her. A handwritten note from [REDACTED] states that he saw the petitioner on April 13, 2000, diagnosed her with depression and prescribed her an antidepressant medication. Dr. [REDACTED] explains that he advised the petitioner to visit him again in three weeks, but that she failed to do so and was taken to Overlook Hospital Crisis Intervention on February 20, 2001. [REDACTED] states that he saw the petitioner again on October 16, 2003, found her to be severely depressed and again prescribed her antidepressant medication and referred her for a psychiatric and psychological consultation. [REDACTED] does not state that [REDACTED] treatment of the petitioner was the primary cause, trigger or a contributing factor to her depression. [REDACTED] also does not state that the petitioner exhibited any other symptoms or conditions that commonly occur with individuals who have been subjected to domestic abuse. With her RFE response, the petitioner also submitted a bill from a psychotherapist for service on March 16, 2000 and April 6, 2000, but she did not submit the medical records from these visits or any further explanation of how the bill supports her claim.

The affidavits of three of the petitioner's friends also fail to fully corroborate the alleged extreme cruelty. [REDACTED] states that the petitioner told [REDACTED] that her husband was a drug addict, that he was "verbally abusive" to the petitioner when he was on drugs, that the petitioner was treated for depression because of her husband's problems, and that she had a miscarriage shortly after her husband's arrest. [REDACTED]

does not describe any specific incidents of [REDACTED] abuse of the petitioner that she witnessed. [REDACTED] states that the petitioner told her that her husband "was often verbally abusive towards her. She felt this was due to his drug problem." [REDACTED] also affirms that the petitioner had a miscarriage shortly after her husband's arrest and received treatment for her depression. Again, [REDACTED] does not specifically describe any incidents of abuse or state that she personally observed [REDACTED] abuse the petitioner. [REDACTED] states that the petitioner told her that [REDACTED] took "a lump sum of money out of their joint bank account on several occasions with no explanation. Her expensive jewelry was taken as well." [REDACTED] does not further explain these events or describe any other incidents of [REDACTED] treatment of the petitioner that she witnessed.

Counsel's statements on appeal do not overcome the deficiency of the record. Three and a half pages of counsel's four-page appellate brief summarize the petitioner's statement, the evidence submitted and the director's decision. Counsel's only contention on appeal is that "the service is erroneous in its conclusion and the evidence when taken as a whole clearly established that petitioner was subject to extreme mental cruelty. . . . [T]he petitioner attributed her depression to her problems with the marriage. One can conclude that the problems with her husband caused her depression and under such circumstances mental cruelty has been established." Even if the petitioner's depression was caused by the difficulties in her marriage, the record does not establish that [REDACTED] treatment of the petitioner rose to the level of extreme cruelty. Rather, the evidence indicates that the primary problem impacting the petitioner was her husband's drug addiction and incarceration.

In review, the evidence does not establish that [REDACTED] behavior rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's statement and the affidavits of her friends describe no specific incidents of abuse. The record contains no evidence that the petitioner's depression was caused or triggered by her husband's extreme cruelty, rather than the stressful circumstances surrounding his drug addiction and incarceration. In addition, the petitioner submitted no evidence, for example, that she obtained an order of protection from her husband, took other legal steps to end his alleged abuse, sought refuge from his alleged abuse, or any explanation as to why she did not take such action. Accordingly, the petitioner has not established her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must therefore be denied.

The burden of proof in visa petition 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.