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**U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529**



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

169

FILE:

EAC 01 169 50389

Office: VERMONT SERVICE CENTER

Date: **FEB 22 2005**

IN RE:

Petitioner:

Beneficiary:

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:

[Redacted]

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

SS Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of Ecuador 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.

The director denied the petition, finding that the petitioner failed to establish that he had been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse, and is a person of good moral character.

On appeal, counsel for the petitioner submits a therapist's report that had been previously submitted to Citizenship and Immigration Services (CIS), an affidavit of the petitioner's uncle, and an updated police clearance.

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 or her 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;
- (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.

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 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).

The regulation at 8 C.F.R. § 204.2(c)(i) requires the petitioner to show that he is a person of good moral character.

The record reflects that the petitioner wed [REDACTED] a United States citizen, on June 5, 1996 in Queens, New York. The evidence on the record indicates that the petitioner and his wife separated in 1997. The petitioner has previously applied for a preference visa on February 16, 2000. The director denied the petition on June 15, 2000 and the AAO dismissed a subsequent appeal. In the instant case, the petitioner filed a 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, his U.S. citizen spouse during their marriage.

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.

Because the petitioner furnished insufficient evidence to establish that he is a person of good moral character and that he had been battered by, or subjected to extreme cruelty perpetrated by, his citizen spouse, the director requested the petitioner to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, and that he is a person of good moral character.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence.

On appeal, counsel for the petitioner resubmits a psychosocial assessment dated September 9, 1999, written by social worker [REDACTED]. Counsel also submits an affidavit written by the petitioner's uncle, and an updated police clearance.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse. The evidence consists of the petitioner's statements, a psychosocial assessment dated September 9, 1999, an uncle's affidavit, and a social worker's report dated March 13, 2001.

The petitioner's primary complaint about his wife's conduct is that she left him. Abandonment is not tantamount to extreme cruelty.

It is noted that the petitioner did not seek psychological treatment until September 1999, two years after he and his wife separated. The therapist wrote that the petitioner "feels betrayed and frustrated because his estranged wife offered to help him but never followed through." Neither the petitioner nor his therapist indicated that the petitioner's wife had ever been verbally or physically abusive; however, the petitioner's uncle reported that the petitioner had told his uncle that the petitioner's wife "would constantly curse him and push him." It is unclear why the petitioner never claimed to be the victim of physical abuse, whereas his uncle claims he was. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The therapist stated that the petitioner's wife had been "emotionally abusive" but failed to explain how she had been abusive towards the petitioner. The petitioner's own statements are insufficiently specific as to the exact harm he suffered from his spouse. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, the petitioner failed to establish that he had been battered by, or subjected to extreme cruelty by, his citizen spouse.

The director also determined that the petitioner failed to establish that he is a person of good moral character, as required by 8 C.F.R. § 204.2(c)(1)(i)(F). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner is a person of good moral character, including police

clearances or records from each place he had resided for at least six months during the three-year period before filing the petition. The petitioner submitted a police clearance dated August 11, 1998. The petitioner filed the instant petition on April 19, 2001; therefore, the police clearances should have covered the period of at least April 19, 1998 through April 19, 2001. The petitioner is required to establish his eligibility as of the date of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). On appeal, counsel for the petitioner submits an updated police clearance. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. According to the record before the director, the petitioner had submitted insufficient evidence to establish that he is a person of good moral character.

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.