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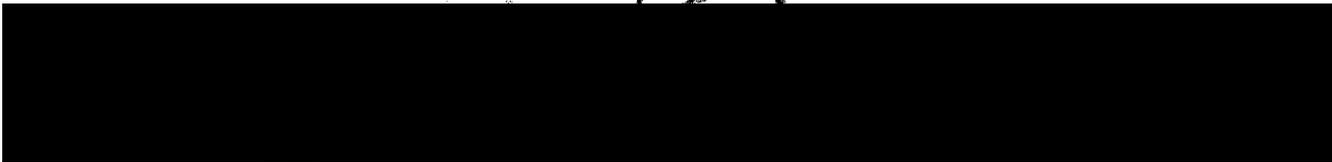
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 22 2005
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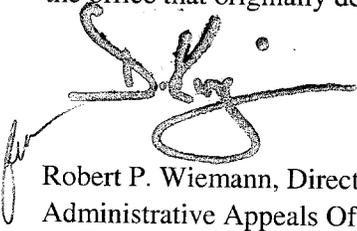
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:
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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (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.

The director denied the petition, finding that the petitioner failed to establish that she entered into the marriage with her citizen spouse in good faith and that she has been battered or the subject of extreme cruelty perpetrated by her citizen spouse.

The petitioner files a timely appeal.

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 in the United States 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 record reflects that the petitioner married her United States citizen spouse on July 20, 1985 in Paterson, New Jersey. On June 27, 1997, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage. The director found the petitioner submitted insufficient evidence to establish eligibility and denied the petition on November 18, 1997. The petitioner filed a second petition on May 7, 2001. In a decision dated November 15, 2004, the director denied the petition, finding that the petitioner failed to establish that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and that she entered into the marriage in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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 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.

Further, 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 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)(1)(i) requires the petitioner to show that she entered into the marriage to the citizen in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2)(ix) states:

Good Faith Marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

Because the petitioner furnished insufficient evidence to establish that she had been abused or subjected to extreme cruelty and that she entered into the marriage in good faith, the director requested the petitioner to submit additional evidence on August 7, 2001. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty and that she entered the marriage in good faith.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the request for additional evidence. The discussion will not be repeated here.

On appeal, the petitioner indicates that she has satisfied the eligibility requirements with the documents filed concurrent with the instant application as well as documents submitted with the filing of a prior Form I-360. The petitioner refers to "evidence by witnesses of the marital relationship" and the "mental suffering . . . found by clinical therapists."

Upon review, we find the evidence contained in the record is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse. First, as noted previously, the petitioner's first Form I-360 was denied because the director found the petitioner failed to submit evidence sufficient to establish eligibility. Therefore, contrary to the petitioner's statement on appeal, the documentation contained in the record from her previous petition, is not sufficient to establish she has been battered or subject to extreme cruelty and that she entered the marriage in good faith.

The evidence contained in the record consists of the following:

- The petitioner's marriage license.
- A psychosocial assessment diagnosing the petitioner as having "Dysthymia or Depressive Neurosis."
- A psychiatric evaluation dated March 4, 1997, indicating the petitioner suffers from "major depression / anxiety disorder."
- Affidavits from relatives and acquaintances of the petitioner attesting that the petitioner lived with her husband "for a period one year" and that her husband "left her in 1987 [and] we never heard from him [again]."

- Affidavits from relatives and acquaintances indicating the date of the petitioner's marriage and the fact that the petitioner's husband was physically and verbally abusive.

The affidavits submitted to establish the petitioner's good faith marriage and abuse are of the most general nature. The affiants provide no specific details about the petitioner's courtship or marriage to her spouse. As it relates to the petitioner's alleged abuse, the affiants provide no details about particular instances in which they witness the purported abuse, and instead make general statements, such as, "[I] was a witness of verbal abuse in the time of the marriage," and "he always had a verbal abuse with her."

The petitioner failed to submit insurance policies in which she or her spouse is named as the beneficiary. She failed to submit bank statements, tax records and other documents that show she shared accounts and other responsibilities with her spouse. She failed to submit evidence of joint ownership of property. The affidavits provided contain scant information about the petitioner and her husband's married life. The record has not established a commingling of funds and assets or joint financial liabilities, or other objective evidence to indicate that the petitioner and her husband intended to establish a life together.

Accordingly, we find the record insufficient to establish that the harm suffered by the petitioner rose to the level of abuse or extreme cruelty and that she entered into the marriage in good faith.

ORDER: The appeal is dismissed