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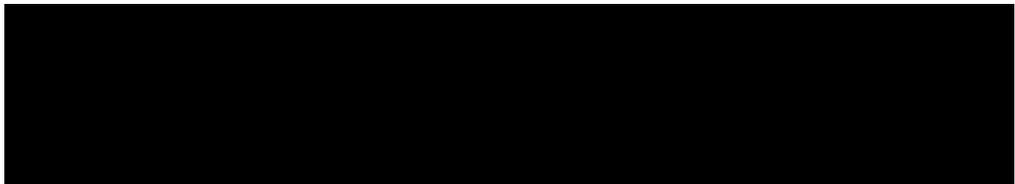
FILE: [Redacted]
EAC 04 073 52817

Office: VERMONT SERVICE CENTER

Date: MAY 17 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:

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 Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 49-year old female 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 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 petitioner submits a timely appeal and indicates that she is sending a brief and/or evidence within 30 days. To date, three months after the filing of the appeal, the record contains no further submission from the petitioner. We, therefore, consider the record to be complete as it now stands.

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 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.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] in the Bronx, New York on August 8, 1994. On January 15, 2004, 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 citizen spouse during their marriage.

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 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) also requires the petitioner to show that she entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish her eligibility, she was requested on October 21, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish that she resided with her citizen spouse during the marriage, that she entered into her marriage in good faith, that she has been battered or the subject of extreme cruelty perpetrated by permanent resident spouse, and that she is a person of good moral character. The director also specifically requested the petitioner to submit evidence of her spouse's United States citizenship and a copy of her marriage certificate.

The petitioner responded to the director's request on December 10, 2004 by submitting the following documents:

- A letter from the New York State Division of Criminal Justice Services indicating the petitioner had "no criminal or non-criminal history information on file."
- The petitioner's statement regarding her marriage and the alleged abuse.
- Three letters from friends and relatives describing the petitioner's marriage.
- A psychiatrist's letter indicating the petitioner has been diagnosed with chronic Psychological Depression and that she attends monthly therapy sessions.
- A copy of her spouse's birth and baptismal certificates.
- A copy of the petitioner's marriage certificate.
- A NYNEX bill issued to the petitioner's spouse.
- The petitioner's birth certificate.
- Receipts for cash showing the petitioner's advance of cash to her spouse.

The director, in his 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 states:

I am filing an appeal because I will like you to give me another opportunity to present you copies of a few documents. Please allow me more time to produce this evidence. I will appreciate if you take in consideration that I have good intention to fix my status as resident.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In his request for further evidence, the director noted the deficiencies in the record and specifically listed the evidence to be submitted to support the petitioner's claims. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The petitioner's statement that she is in the process of gathering additional evidence is immaterial. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.*

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 petitioner stated that she had to "endure harsh language" and was "referred to negatively" by her husband, that her husband had problems with substance abuse, and that he "loses all control when confronted with issues and resort[s] to aggression and stops and storms out."

The evidence is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her citizen husband. The conduct she describes does not rise to the level of "extreme cruelty."

Further, the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H).

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 courtship and 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.

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.