

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

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **APR 05 2005**
EAC 03 121 54161

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:

[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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference 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 Trinidad 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 entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner asserts that the director erred in denying the instant petition due to insufficient evidence of abuse because the petitioner's wife destroyed "every picture, bill, statement and receipt when she abandoned the petitioner."

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 regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

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.

The record reflects that the petitioner last entered the United States as a K-1 fiancé on August 10, 1996. The petitioner wed U.S. citizen Jacqueline Overby on August 15, 1996 in Hampton, Virginia. On October 17, 1996, the petitioner was granted conditional permanent resident status based upon his marriage to a U.S. citizen. On December 8, 1998, the district director terminated the petitioner's conditional permanent resident status because the petitioner failed to submit a joint petition requesting removal of conditional basis of residence. On January

14, 1999, the petitioner filed a self-petition¹ 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 director denied the petition. The petitioner appealed the denial to the AAO. The AAO dismissed the appeal on November 13, 2003. On April 14, 2003, the petitioner filed the instant Form I-360 petition. The petitioner and his wife were divorced on March 2, 2004. On June 15, 2004, the director gave the petitioner notice of her intent to deny the petition. The director denied the instant petition on October 6, 2004.

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.

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 he has resided with his citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that he had entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by his citizen spouse, the director issued a notice of intent to revoke and granted the petitioner time to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, and that he married his spouse in good faith.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her notice of intent to deny. The discussion will not be repeated here.

On appeal, counsel for the petitioner asserts that the director erred in denying the petition.

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 following:

- A letter, written by [REDACTED] dated October 12, 1998.
- A letter dated October 22, 1998, written by [REDACTED]
- A statement, written by [REDACTED] dated January 7, 2003.
- A letter dated January 2, 2003, from the Metropolitan Counseling Service.
- A letter dated January 7, 2003, from [REDACTED] Family Health Associates.
- The petitioner's identical statements dated February 28, 2003 and August 10, 2002.

¹ EAC9904051624.

- The petitioner's letter dated July 27, 2004.
- An undated letter from an individual named [REDACTED] whose last name is illegible.

Prissilla Cooper's letter states: "My eye witness [sic] account of the many instances that I have observed my co-worker [the petitioner], coming to work with various marks appearing to be cuts and bruises [sic]. [The petitioner told me that] his wife was physically abusing him." Ms. Cooper accepted the petitioner's explanation for the cause of his cuts and bruises. The letter is not based upon an first-hand witness of the physical abuse, but of seeing cuts and bruises on the petitioner's face.

In a letter dated October 22, 1998, Laurette Allen wrote: "I write in behalf of [the petitioner], being aware and witness to the results abuse put upon him by his estranged wife, [REDACTED]. [REDACTED] suffered serious scratches on his nose and cheeks by [REDACTED] e." [REDACTED] failed to state why she believed that the petitioner's spouse was responsible for the scratches.

[REDACTED] wrote in a statement dated January 7, 2003 that the petitioner's wife pulled a knife on the petitioner. She failed to explain how she knew this.

The author of a letter written on Metropolitan Counseling Service letterhead stated that the petitioner presented himself to discuss his marital difficulties. The letter's author states that the petitioner told him that his wife was violent and physically abusive on several occasions.

David Deuser, Family Health Associates, wrote that the petitioner sought counseling on January 6, 2003 due to a "dysfunctional marriage."

In a statement, the petitioner said:

You asked me to give a detail description of the time [my wife] stuck the knife in my belly. . . . [W]hen I got home what [my wife] wanted to tell me was that she had sent a letter to immigration to cancel the paper work, so finally I just give up and yell at her . . . slap her and then we started fighting, so she went to the kitchen, got a knife and pressed it to my stomach or chest or the other. I then left . . . my face was bleeding from where she had scratched my face.

In an affidavit, the petitioner said that his wife became bossy, jealous and argumentative. He said that his wife threatened to divorce him and cancel the paper work at immigration. He further stated that he and his wife often argued and his wife would throw him out of the house. He said that his wife confiscated his passport and other papers and eventually became involved with another man. The petitioner indicated that he and his wife had called the police to report domestic incidents but that he was unable to obtain court records and police reports because too much time had lapsed since the incidents. 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).

It is further noted that the petitioner stated that he had slapped his wife during an argument, which suggests that the petitioner was not just a victim but also an active participant in domestic incidents.

It is noted that the petitioner did not submit evidence that he sought refuge in a shelter or elsewhere. He did not obtain an order of protection against his spouse or take other legal steps to end the abuse. His statements are insufficiently specific as to the exact harm he suffered from his spouse. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190.

The balance of the evidence submitted to establish abuse consists of hearsay.² Accordingly, the evidence is insufficient to establish that the petitioner was battered by, or subjected to extreme cruelty perpetrated by, the citizen during the marriage.

The director determined and the AAO concurs that the petitioner failed to establish that he had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a notice of intent to deny, the director requested additional evidence and listed the types of evidence that would show that the petitioner had married his wife in good faith. The petitioner provided CIS with his own statements. The petitioner failed to submit insurance policies in which he or his spouse is named as the beneficiary. He failed to submit bank statements, tax records and other documents showing that the petitioner and his wife shared account and other responsibilities. He failed to provide evidence of his courtship. He did not submit evidence of joint ownership of property. No children were born of the marriage. Accordingly, the evidence on the record is insufficient to establish that the petitioner married his citizen spouse in good faith.

Beyond the director's decision, it is noted that the petitioner's marriage certificate indicates that his citizen wife had a prior marriage. The record does not contain evidence of the legal termination of the citizen spouse's prior marriage. This calls into question whether the petitioner was lawfully married to his citizen spouse. Accordingly, it is unclear from the record that the petitioner was lawfully wed to his citizen spouse. For this additional reason, the petition may not be approved.

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.

² Evidence based on the reports of others rather than on the personal knowledge of a witness.