

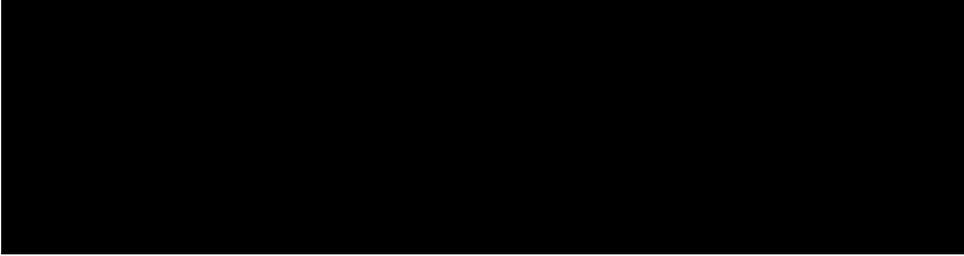
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED]
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Office: VERMONT SERVICE CENTER

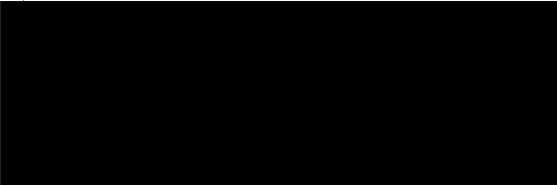
Date: **AUG 31 2005**

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:



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. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO reopened the matter on its own motion and afforded the petitioner 30 days in which to respond to the motion. The matter has now been reopened, the previous decision of the AAO has been vacated. The petition will be dismissed and the petition will be denied.

The petitioner is a native and citizen of Morocco 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.

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 spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] 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;

* * *

(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 record reflects that the petitioner wed United States citizen [REDACTED] in Arlington, Virginia on February 18, 2000. The petitioner's spouse filed a Form I-130 on the petitioner's behalf on March 10, 2000. The petition was denied on September 7, 2000 for abandonment. On December 20, 2002, the petitioner filed the instant 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 sole issue to be determined is whether the petitioner has established that he has been battered by, or has been the subject of extreme cruelty perpetrated by his citizen spouse during the marriage. As it relates to this issue, the record contains the following documents:

- A psychological evaluation from [REDACTED] Ph.D.
- Receipts for the petitioner's [REDACTED] and [REDACTED] prescriptions.
- A letter from Dr. [REDACTED]
- An affidavit from the petitioner's brother.
- An affidavit from the petitioner.

- An affidavit from a manager at the petitioner's place of employment.
- An affidavit from the petitioner's cousin.

In her evaluation, Dr. [REDACTED] claims that the purpose of her evaluation was to "assess the emotional impact of his marriage to [his citizen spouse] who revealed after their marriage that she is a lesbian." In her evaluation, Dr. [REDACTED] does not describe any incidents of physical, verbal, or emotional abuse inflicted upon the petitioner by his spouse and concludes that the petitioner's depression is "directly consequent to the betrayal by his wife and her revelation that she preferred a lesbian relationship to her relationship with him." Similarly, while Dr. [REDACTED] letter indicates that seeing his wife with another woman was "more than [the petitioner's] psyche could tolerate," there is no indication that the petitioner's depression is the result of battery or extreme cruelty.

In his statement, the petitioner claims his wife was "a controlling woman and verbally abusive," that she would insult him and call him names such as "stupid, idiot [and] ignorant." The petitioner claims that he was "mental[ly] tortured" by seeing his wife in their home with another woman because he could not "tolerate [being] insulted anymore and seeing [his] wife with another lady." Finally, the petitioner claims that the two car accidents he had after separating from his wife were due to his "mental state" because he is still "suffering from the marriage."

The petitioner's brother submits a letter in which he claims he was a witness to "several violent arguments" between the petitioner and his spouse and the purported "emotional and mental abuse" inflicted on the petitioner by his spouse. Specifically, the petitioner's brother indicates that the petitioner's spouse would call the petitioner "all kind of gross words and saying that he was an ignorant and an idiot, mainly because of his broken English." The petitioner's brother claims, "the situation got worse" when the petitioner's spouse told the petitioner she had a lover and "often demand[ed] he [get] out of the house."

In the affidavit submitted by [REDACTED] a manager at the petitioner's place of employment, Mr. [REDACTED] states that he witnessed several of the petitioner's wife's outbursts. Mr. [REDACTED] describes one incident in which the petitioner's spouse called the petitioner names, and shouted and pointed her finger in the petitioner's face.

The petitioner's cousin indicates that he was a witness to the petitioner's spouse's "verbal abuse" of the petitioner, which consisted of calling the petitioner "harsh names." The petitioner's cousin states that he found the petitioner's spouse to be "very aggressive and that her unprovoked attitude was strange, thus emotionally harming" the petitioner.

In her decision, the director stated that the "Congressional intent [in implementing the provisions of the Violence Against Women Act] did not encompass the mental anguish generally associated with marital difficulties or abandonment," and therefore the fact that the petitioner's spouse "has admitted she is in an intimate relationship with another woman and does not want to live with you anymore does not promote a finding of extreme mental cruelty."

On appeal, the petitioner, through counsel, argued that the petitioner has "suffered extreme emotional abuse beyond abandonment" and submitted a new psychological report and a letter from the petitioner's employer. The petitioner also submitted additional documents, such as tax returns, that have no relevance to the petitioner's claim of abuse.

The psychological evaluation submitted on appeal by Dr. [REDACTED] Austrian provides no new details regarding the purported abuse inflicted upon the petitioner. The evaluation describes the names the petitioner was called and the fact that the petitioner was devastated by his wife's revelation that she was a lesbian. Dr. [REDACTED] also claims that

the petitioner's two car accidents indicate a "suicidal ideation" as in both incidents, the petitioner "saw that a car was coming and endangering him but did nothing to move his own vehicle."

In his statement on appeal, the petitioner's supervisor indicates that the petitioner's "productivity, energy and income decreased, because of suffering he is experiencing in his personal life."

In response to the AAO's motion to reopen, the petitioner submitted evidence of new representation. The petitioner's new counsel submits a brief and copies of evidence already contained in the record. In his brief, counsel argues that the director "ignored credible evidence" and erred by adding the requirement that the petitioner "show that his spouse 'used a pattern of purposeful behavior to achieve compliance from or control over'" the petitioner. It is counsel's claim that the petitioner's spouse's affair was an "intentional" act and should be considered "an act of psychological abuse or exploitation and, as the regulation requires, consider it an act of violence." We are not persuaded by any of counsel's arguments.

While the evidence contained in the record adequately documents the circumstances surrounding the petitioner's marriage, the evidence does not establish that the harm suffered during the petitioner's marriage was equivalent to battery or extreme cruelty. Upon review, we find the documentation clearly establishes that the petitioner suffers from depression due to events in his marriage and the fact that his marriage did not work out. However, eligibility is not established simply by showing that the petitioner is depressed over the incidents in the marriage. Instead, what must be shown is that the depression or other repercussions of the marriage were caused by incidents or behavior that equate to battery or extreme mental cruelty.

The record does not contain a claim of battery or any evidence to demonstrate that the petitioner was battered or physically abused. We note the absence of evidence of reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel documenting the claimed abuse. Further, the record does not contain an order of protection against the petitioner's spouse or any other evidence that the petitioner sought legal steps to end the abuse.

As it relates to the petitioner's claim of extreme mental cruelty, we do not find the petitioner's claims of name-calling and insults rise to the level of extreme mental cruelty. While the petitioner alleges he was psychologically abused, his claim is based upon the fact that his wife was blatantly carrying on an affair with another woman. Although we have no reason to dispute the petitioner's claims regarding his spouse's infidelity, we do not find that the act of her infidelity or the treatment of the petitioner rose to such a level as to be considered extreme cruelty.

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.