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

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 14 2005
EAC 02 121 51713

IN RE: Petitioner: [redacted]
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.

Mari Johnson

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 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 had been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, is a person of good moral character, and entered into the marriage to the citizen in good faith.

On appeal, the petitioner requested a de novo review and resubmits an ex parte restraining order dated July 1997 and a psychological assessment dated March 6, 2004.

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.

According to the evidence on the record, at the age of 34, the petitioner wed 25-year old United States citizen [redacted] in Bronx, New York on January 11, 1994. On February 28, 1994, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The Form I-130 petition was initially approved on June 15, 1994. After the completion of an investigation, the director issued a notice of intent to revoke (NOIR) the approval of the petition on October 17, 1996. In the NOIR, the director informed the petitioner that a consulate's

investigation conducted on March 6, 1996, revealed that the claimed marriage was fraudulent based on the beneficiary's own confession that the marriage was entered solely to gain permanent residence in the United States. On January 8, 1997, approval of the Form I-130 petition was revoked. On October 14, 1997, the petitioner filed a Form I-360 self-petition.[1] On October 18, 1997 she filed a second Form I-360 petition.[2] The first petition was terminated because it was a duplicate. The second Form I-360 petition was denied on December 23, 1997. On February 23, 2002, 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, her 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 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) requires the petitioner to show that she has resided with her 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 she is a person of good moral character, entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by her citizen spouse, the director asked her to submit additional evidence in a notice of intent to deny (NOID) the petition. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that she married her spouse in good faith, and that she is a person of good moral character. In response to the NOID, the petitioner submitted an assessment from Irene Torres, psychotherapist, dated March 6, 2004. She also submitted a good conduct certificate from the City of New York dated January 29, 2004, which failed to indicate whether the petitioner has a criminal record. She also submitted an affidavit from a former landlord that indicates that the petitioner and her spouse resided together.

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

On appeal, the petitioner "resubmits" previously provided documentation.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse. The evidence consists of the following:

- The petitioner's statements dated May 16, 1997 and April 21, 2004.
- The petitioner's petition for an ex parte order.
- A psychological evaluation dated April 4, 1997.
- A temporary ex parte restraining order dated July 31, 1997.
- A psychological assessment dated March 6, 2004.

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[1] EAC 02 236 51374.
[2] EAC 97 180 50665.

- Letters dated September 22, 1997, December 19, 1998 and April 23, 2001 from social service agencies indicating that the petitioner reported that she is a victim of domestic violence.
- An affidavit dated April 21, 1997 from that provides she witnessed the petitioner's spouse slapping the petitioner on April 1, 1996.

It is noted that the petitioner failed to file a complaint with the police against her spouse. She did not obtain a permanent order of protection against her spouse or take other legal steps to end the abuse. She merely obtained a temporary order for protection. Her statements are insufficiently specific as to the exact harm she suffered from her spouse. She said that she had "suffered many mental manipulation [sic] from [her] husband." She also said that her husband abandoned her in April 1996 and that he had mistreated her "before, during and after the marital cohabitation." 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 has submitted insufficient evidence to establish that she had been battered by, or subjected to extreme cruelty by her citizen spouse.

The director determined and the AAO concurs that 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). In a notice of intent to deny, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. The director also noted that the petitioner had been refused an immigrant visa based on the grounds that the Consular Officer determined that her marriage was entered into for the sole purpose of securing permanent resident status. The petitioner provided Citizenship and Immigration Services (CIS) with her own statements. She wrote that she married in good faith. She also submitted a statement from a counselor at Victim Services that states that the petitioner "entered into marriage in good faith." In the absence of corroborating evidence such as financial records showing that the petitioner and her spouse shared assets and liabilities, the evidence is insufficient to establish that the petitioner married her citizen spouse in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that she is a person of good moral character. The petitioner submitted a police clearance dated January 29, 2004 that fails to indicate whether or not the petitioner has a criminal history. The petitioner has submitted insufficient evidence to establish that she is a person of good moral character, and has failed to overcome the director's objections to approving the petition.

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.