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U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 03 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 Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 29-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 that the petitioner failed to establish that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On appeal, counsel for the petitioner submits a brief and additional evidence.

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.

According to the evidence in the record, the petitioner wed United States citizen [REDACTED] in Lynn, Massachusetts on July 1, 1994. The petitioner claims to have resided with her citizen spouse from July 1994 until May 1998. On September 18, 1997, the petitioner's spouse filed a Form I-130 petition on her behalf. The petitioner's spouse subsequently withdrew the Form I-130 petition and the petition and accompanying Form I-485, Application for Adjustment of Status, were denied on November 2, 1999 and the petitioner was placed in removal proceedings. The removal proceedings were terminated, without prejudice, on March 2, 2000.

On November 19, 2003, 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 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).

Because the single statement submitted by the petitioner at the time of filing was insufficient to establish that she has been battered by or subjected to extreme cruelty by her citizen spouse, she was requested on August 16, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish that she was battered or subjected to extreme mental cruelty by her spouse.

On November 19, 2004, the petitioner responded to the director's request regarding the purported abuse by submitting two letters¹ from acquaintances.

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. Specifically, the director noted that the alleged claim of abuse could not be supported by the "[petitioner's] statement alone," and that the acquaintance letters "lack specifics" to properly corroborate the petitioner's claims and credibility.

On appeal, counsel for the petitioner argues that the letters "are honest recollections of events that occurred almost seven years ago and constitute, to the best of their ability, the 'specifics to establish the credibility' of the petitioner's claim." We do not agree with counsel's statement. In his decision, the director did not question the credibility or the reliability of the acquaintance letters. Instead, the director found the letters lacked the specific details necessary to substantiate the petitioner's claims. Rather than submitting letters with a more detailed account of the abuse and/or cruelty witnessed by the petitioner's acquaintances, counsel states that when "considered within the context of all of the evidence submitted by the petitioner, as opposed to considering them in isolation . . . are quite sufficient to establish eligibility for the benefit sought." The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

On appeal, counsel submits a letter from [REDACTED] a third purported witness of the alleged abuse suffered by the petitioner. In her letter, Ms. [REDACTED] states that she was a witness "to the mistreatment that [the petitioner] received, both physical and mental." Ms. [REDACTED] further states that the petitioner's spouse threatened to "call immigration," that the petitioner did not "receive any support" from her spouse when her mother was sick, and that the petitioner's spouse "was not very open minded." Although Ms. [REDACTED] indicates that she saw witnessed the petitioner with "a bruise[d] eye," she provides no detail or explanation as to how or why she believes the petitioner's spouse caused such a "bruise."

In review, the evidence submitted on appeal is insufficient to overcome the director's findings and to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse.

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.

¹ Although the director refers to these letters as "affidavits," we find no evidence to consider these letters as sworn statements, made under oath and witnessed by a person so authorized, such as a notary public

ORDER: The appeal is dismissed.