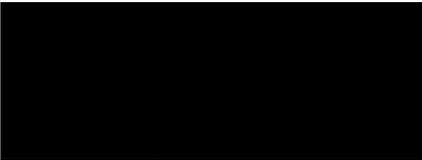




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 18 2005
EAC 03 042 50005

IN RE: Petitioner: [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:



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 Director, Vermont Service Center, denied the immigrant 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 the Dominican Republic who seeks 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 an alien subjected to battery or extreme cruelty by his United States citizen spouse. The director denied the petition, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his United States citizen spouse during their marriage. On appeal, counsel asserts that the director failed to give sufficient weight to evidence previously submitted and now submits an additional affidavit of the petitioner and a copy of a psychotherapist's statement that was previously submitted.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if he or she demonstrates that the marriage to the United States citizen spouse was entered into in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The corresponding 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, including rape, molestation, incest (if the victim is a minor), or forced prostitution 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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and requirements for a self-petition under section 204(a)(1)(B)(ii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

....

(iv) *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 abuse 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.

In this case, the record indicates that the petitioner married United States citizen [REDACTED] on July 27, 1995 in Brooklyn, New York. The petitioner's spouse filed a Form I-130 petition on his behalf on August 28, 1995 which was approved on November 6, 1995. On May 1, 1996, the petitioner filed a Form I-485 Application to Adjust Status, which was denied on January 2, 1997 for failure to appear for an interview on the application. That case was subsequently reopened in 1998 and denied on May 23, 2001 for failure to submit fingerprints. On May 24, 2001, the petitioner arrived in New York City after a trip to the Dominican Republic and was subsequently placed in removal proceedings under section 240 of the Act, 8 U.S.C. § 1229a. The petitioner filed a second Form I-485 on July 9, 2002. On November 20, 2002, the petitioner filed this Form I-360 self-petition. On December 26, 2002, the petitioner's wife was issued a Notice of Revocation of her approved I-130 petition for the petitioner.

Finding the evidence submitted with the Form I-360 to be insufficient, the director issued a Request for Evidence (RFE) on September 3, 2003 asking the petitioner to submit documentation that he was battered or subjected to extreme cruelty by his wife. The third page of the RFE listed specific examples of documents that the petitioner could submit to establish abuse. The director then issued a Notice of Intent to Deny (NOID), finding that the evidence submitted in response to the RFE indicated marital problems, but not battery or extreme cruelty.

The petitioner submitted an affidavit with his RFE response in which he states that his wife argued with him over money, "didn't like to cook, always I had to be buying food in the street," and that she was a "very jelouse [sic] girl, she didn't want me to have any friends, she always hit me if I used to do something she didn't like, everything I do was bad for her, she humillate [sic] me in front of people, she agitated me fisically [sic] and mentally." In response to the NOID, the petitioner submitted a second affidavit in which he states that on various days from 1996 to 2000, his wife "slapped me in both cheeks and asked of me to respond as a man. She enticed me to become a physical abuser but I never raised my hands to hit her as she had done it to me many times. I had never asked for a protection order nor had to ask for police investigation during the period of at least 30 months that we shared the same room as husband and wife." The petitioner explained that his wife was "calling [him] names, degrading [his] manhood" and that when he asked his wife to be faithful she refused and when he asked her "to sign a separation document or a divorce instead[,] [s]he forced herself into [his] side of the bed, had demanded sexual satisfaction and had refused in numerous times. Her absences from the apartment got in 2000 to a point of zero tolerance. Thus, I and [REDACTED] finally divided by July, 2000." Regarding the effects of his wife's treatment, the petitioner states, in his RFE response affidavit, that he "was felling [sic] very uncomfortable [sic]" and, in his NOID response affidavit, that he "became much more conservative after a marital experience with [REDACTED]"

As evidence to support his claim of abuse by his wife, the petitioner submitted two assessments from [REDACTED] a psychotherapist, and letters from personal friends and acquaintances. Ms. [REDACTED] first assessment

states that the petitioner's first visit with her occurred on October 28, 2003, nearly a year after his self-petition was filed and over three years since his stated separation from his wife. The assessment reports that the petitioner said his wife would not allow his family to visit their home, would not communicate her feelings to him, verbally abused him in front of his family and friends, and followed him to and from work. The assessment describes the petitioner's symptoms as absence of pleasure in life, nervousness, anxiety, depression and low energy and identifies his stressors as his "uncertain feelings towards- [REDACTED]-uncertain immigration status, [and] feelings of depression and Anxiety." In her second assessment dated September 28, 2004, Ms. [REDACTED] reports further information that the petitioner related regarding his wife's behavior during their marriage.

Yet, Ms. [REDACTED] notes that the petitioner's "major psychosocial stressor is his uncertain immigration status. . . . [He] has functioned adequately in the last year. However, the realization that the immigration decision may come soon and may not be favorable is a shock to him. The patient has not prepared himself for a negative response."

The record also contains letters from the petitioner's friends and acquaintances, ten of which attest to his wife's alleged mistreatment of him. The letters state that the petitioner's wife was jealous and possessive; called him names; and insulted, screamed at, hit, and humiliated him in front of his family and friends. Some of the letters state that the petitioner's wife's behavior "made [his] life miserable," that "[a]fter their separation he gets angry and his face look [sic] sad all the time," "he looks tormented and frustrated," and that he felt "depressed."

Other evidence in the record contradicts the petitioner's and the letters' descriptions of his marital relationship. With his Form I-360, the petitioner submitted an affidavit from his wife dated November 14, 2002. Ms. [REDACTED] states that her husband was jealous of her and questioned her absences from their home. In a letter submitted with the petitioner's RFE response, his mother-in-law states that "due to the fact that my daughter was very jealous as was he himself, this caused many problems between them. That is why they are separated and no longer together."

According to Citizenship and Immigration Services (CIS) records, during an interview with an adjudications officer on November 26, 2002 concerning his second application for adjustment of status, the petitioner was asked what kind of abuse he suffered from his wife and he replied that she frequently asked him for money. When asked if his wife had ever spoken to him harshly, used foul or demeaning language, or struck him, the petitioner answered in the negative. When asked if he had ever called the police, went for any sort of medical treatment, or had sought an order of protection from his spouse during their relationship, he replied that he had not. On appeal, the petitioner submits a third affidavit attempting to explain the discrepancies in the record. The majority of his statements are contradicted by his wife's affidavit, his mother-in-law's letter and CIS records concerning his November 26, 2002 interview.

In sum, the record indicates that the petitioner and his wife had problems with their relationship, which troubled the petitioner. However, not all forms of marital discord rise to the level of battery or extreme cruelty as defined in the regulation. The petitioner submitted no evidence, for example, that he called the police or sought an order of protection against his spouse, sought refuge from her alleged abuse, or sought medical or psychological treatment for the effects of her alleged abuse (rather than to supply evidence for his self-petition). In addition, the record does not establish that the petitioner's anxiety and depression are largely the result of his wife's alleged abuse rather than his uncertain immigration status, or that his life was otherwise significantly impaired due to her alleged abuse. Accordingly, the petitioner has not established that he was battered or subjected to extreme cruelty by his United States citizen spouse. He is thus ineligible

for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and his self-petition must be denied.

The burden of proof in visa petition 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.