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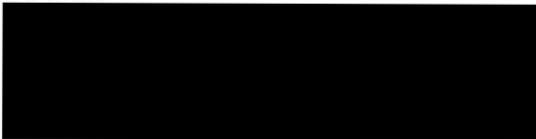
Office: VERMONT SERVICE CENTER

Date: DEC 13 2006

EAC 06 005 50662

IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.

Robert P. Wiemarn, Chief
Administrative Appeals Office

DISCUSSION: The 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 sustained.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition because the petitioner did not respond to a request for further evidence and the evidence submitted did not establish the petitioner's eligibility.

On appeal, the petitioner submits additional evidence.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(B)(ii)(II)(aa) of the Act preserves eligibility for an individual "who was a bona fide spouse of a lawful permanent resident within the past 2 years and whose spouse lost status within the past 2 years due to an incident of domestic violence" (internal punctuation omitted).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under . . . clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The eligibility criteria are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purposes 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 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.

* * *

(ix) *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. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines 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(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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

* * *

(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 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.

* * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding, ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case shows the following pertinent facts and procedural history. The petitioner in this case is a native and citizen of India who married B-S-* on February 15, 1999 in India. At that time, B-S- was a lawful permanent resident of the United States. The petitioner entered the United States on October 12, 2002 as the nonimmigrant spouse of a lawful permanent resident (V-1). On January 28, 2004, the petitioner's husband was arrested and subsequently convicted of felony domestic violence, specifically, inflicting corporal injury on the petitioner. On November 9, 2004, the Executive Office for Immigration Review (EOIR) ordered the petitioner's husband removed from the United States pursuant to section 237(a)(2)(E)(i) of the Act because he was convicted of a crime of domestic violence.

On October 3, 2005, the petitioner filed the instant Form I-360. On October 14, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's marriage certificate, her good faith marriage to her husband, and the birth certificate of her eldest son. The petitioner did not respond to the RFE. On February 3, 2006, the director denied the petition pursuant to the regulation at 8 C.F.R. § 204.1(h) because the evidence previously submitted did not establish the petitioner's eligibility.

On appeal, the petitioner submits evidence that establishes her eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act. Accordingly, the appeal will be sustained.

Qualifying Relationship and Eligibility for Preference Immigrant Classification

The record contains certified documentation from the Registrar of Marriages in [REDACTED] India of the marriage of the petitioner and B-S- on February 15, 1999 and the registration of their marriage on March 24, 1999. Citizenship and Immigration Services (CIS) records show that the petitioner's husband was granted status as a lawful permanent resident on December 29, 1996. The petitioner's husband lost his lawful permanent residency status on November 9, 2004, the date he was ordered removed, due to his conviction for domestic violence against the petitioner. The petitioner filed the instant petition on October 3, 2005, well within two years of her husband's loss of status due to the incident of domestic violence. Accordingly, the petitioner has established that she had a qualifying relationship with her husband at the time this petition was filed pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC)(ccc) of the Act.

* Name withheld to protect individual's identity.

Because the petitioner had a qualifying relationship with her husband, she was also eligible for preference immigrant classification based on that relationship pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) and as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

Joint Residence and Entry into the Marriage in Good Faith

On appeal, the petitioner submitted the California birth certificates of her second child, born on July 20, 2003, and her youngest child, born on February 24, 2006. The petitioner's husband is listed as the father of both of these children. On appeal, the petitioner also submitted documentation of her husband's automobile insurance policy that is dated March 26, 2003 and February 25, 2005 and lists the couple's former marital address and identifies the petitioner as an excluded driver. The petitioner also submitted a copy of the couple's joint 2002 federal income tax return signed by both her and her husband and a Pre-Booking Information Sheet pertaining to her husband's arrest on October 29, 2003, which identifies the petitioner as her husband's spouse and lists their former marital residence as the address of both the petitioner and her husband. This evidence establishes that the petitioner resided with her husband and entered into their marriage in good faith, as required by sections 204(a)(1)(B)(ii)(II)(dd) and 204(a)(1)(B)(ii)(I)(aa) of the Act.

Good Moral Character

With the Form I-360, the petitioner submitted a clearance letter from the Ceres California Department of Public Safety that is dated September 27, 2005. CIS records contain additional evidence of the petitioner's good moral character prior to that date that was obtained in connection with her Form I-485, application to adjust status. Accordingly, the petitioner has established her good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

Battery or Extreme Cruelty

The record, as supplemented on appeal, contains the following evidence of battery or extreme cruelty:

- A Santa Clara, California Police Department "Domestic Violence Supplemental" form dated October 29, 2003, which lists the petitioner as the victim and states, "Victim standing outside of her apartment, had bruises to left eye, scratches on her neck (both sides). Left hand and right forearm. Victim was holding baby [J-K-*] who had a scratch below her right eye, from suspect."
- The corresponding Affidavit Regarding Probable Cause for the October 29, 2003 incident, which identifies the petitioner as the victim and her husband as the suspect and repeats the

* Name withheld to protect individual's identity.

injuries to the petitioner and her baby cited in the supplemental form above. The affidavit further attests that the petitioner stated that after the first or second month of her arrival in the United States, her husband:

began to assault her anytime he was intoxicated. During the past year, the suspect has knocked the victim unconscious at least two times. The suspect will assault the victim by throwing any object within his reach, pulling her hair, punching, kicking and choking her. In July, the suspect assaulted the victim while she was approximately 9 months pregnant. The victim was taken to the hospital (Valley Medical Center) for her injuries and subsequently gave birth to their child while she was there.

- A Newborn Physical Examination form for the petitioner's second child from the Santa Clara Valley Medical Center, which reports that the baby was born on July 20, 2003 and states, "CPS following family for physical abuse of Mom."
- Copies of Protective Orders in Criminal Proceedings issued against the petitioner's husband to protect the petitioner and her second child on October 31, 2004 with an expiration date of October 31, 2004.
- A Newark, California Police Department Incident Report dated January 28, 2004, which identifies the petitioner's husband as the suspect and the petitioner as the victim. The reporting officer states that on arrival, he or she observed the petitioner "sitting on the couch holding an infant child. The victim's face was covered in blood." The reporting officer further states that spoke to the petitioner after she was taken to the emergency room where the officer "observed the following injuries [on the petitioner]: A cut over her right eye, her lips were swollen and cut, her left cheek was swollen and cut, there were numerous bruises on her forehead, there were bruises and scratches on her hands." The report cites the petitioner's statement that her husband slapped her in the face, pulled her to the floor by her hair and hit her in the face using both of his hands. The petitioner explained that she was dazed and did not know how many times her husband hit her and also informed the reporting officer about the October 29, 2003 incident. The report contains a photograph showing the petitioner's face covered in blood.
- An Emergency Room Report from the Washington Hospital Healthcare System in Fremont, California dated January 28, 2004, which reports the following diagnosis of the petitioner: "Multiple facial contusions, scalp contusions, facial lacerations and oral and lip lacerations."
- A Protective Order in Criminal Proceeding against the petitioner's husband for the protection of the petitioner issued on May 7, 2004 with an expiration date of May 7, 2009. A modified Protective Order in Criminal Proceeding issued against the petitioner's husband for the

protection of the petitioner and her children on July 9, 2004 with an expiration date of July 9, 2008.

- A letter dated April 22, 2004 from the California Victim Compensation and Government Claims Board, which informs the petitioner of her allowed claim for reimbursement of medical care following her husband's assault on January 28, 2004.
- A letter addressed to the petitioner from the County of Santa Clara, California Probation Department dated September 2, 2004, which states that the petitioner's husband was placed on probation for a conviction of domestic violence in which the petitioner was the victim.
- A letter dated April 5, 2006, addressed to the petitioner from [REDACTED] Senior Victim-Witness Consultant with the Alameda County California District Attorney's Office, who attests that the petitioner "worked closely with the District Attorney's Office to assure the prosecution of the case: People vs. [B-S-], docket [REDACTED]. The defendant was convicted of one felony count of Domestic Violence, 273.5 PC.

The record establishes that the petitioner's husband battered and subjected the petitioner to extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

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 met that burden. Accordingly, the appeal is sustained.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.