

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

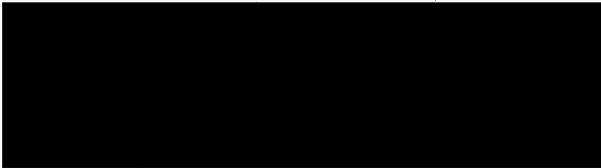
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY

B9



FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: FEB 02 2008  
EAC 04 202 52678

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:

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. 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 Mexico 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 her United States citizen spouse. The director denied the petition, finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her United States citizen spouse during their marriage. On appeal, the petitioner submits a statement further describing her husband's alleged abuse. The petitioner's statement does not establish the requisite battery or extreme cruelty and the appeal will be dismissed for the reasons discussed below.

Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, the individual is not authorized under 8 C.F.R. § 292.1 or § 292.2 to represent the applicant. Therefore, this decision will be furnished to the applicant only.

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 the alien demonstrates that he or she entered into the marriage with the United States citizen spouse 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)(A)(iii) 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 December 23, 1997 in San Diego County, California. Because the petitioner submitted no supporting documents with her Form I-360, the director issued a notice on February 15, 2005, requesting evidence that the petitioner had been battered or subjected to extreme cruelty by her husband during their marriage. In response, the petitioner submitted her own written statement and letters written by four of her acquaintances.

In her first statement, the petitioner explains that her husband's behavior changed dramatically when they moved to live with his sister. The petitioner states that her husband came home late, spent less time with her and her daughters, frequently argued with her, once left for a party for three days, and did not speak to her for days at a time. The petitioner explains that the couple then went to stay with the petitioner's sister, but that shortly after their arrival, her husband left, saying that he was going to visit some friends and never returned. The petitioner reports feeling rejected, lonely, depressed and experiencing an awful pain. Three of the petitioner's acquaintances confirm Mr. [REDACTED] abandonment of the petitioner and her daughters as related to them by the petitioner. They state that the petitioner suffered a lot because of her husband's mistreatment, but do not describe any instances of such mistreatment that they themselves witnessed.

The petitioner submitted no documents of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) to corroborate her statements and those of her acquaintances. She did not submit evidence that she sought help from the police or took other legal steps to end her husband's alleged abuse. The petitioner did not submit evidence that she sought help from clergy, social service agencies, medical personnel, a shelter for the abused or a similar refuge.

As described by the petitioner and her acquaintances, Mr. [REDACTED] mistreatment of the petitioner did not rise to the level of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). For example, neither the petitioner nor her friends describe any occasions in which Mr. [REDACTED] was violent or threatened to take violent action against the petitioner or her children. The petitioner does not report ever being forcefully detained or threatened with physical injury by her husband. Although the statements indicate that the petitioner has suffered emotionally, her pain and depression appear to be the result of her husband's mistreatment and abandonment, actions which do not rise to the level of extreme cruelty.

On appeal, the petitioner submits a second written statement in which she further explains that she suffered many humiliations and felt worthless when the couple was living with her husband's sister because her sister-in-law would always put her down. She states that her husband made her feel bad because of her daughters' father

and lost respect for her as his wife. The petitioner also states that when her husband had reunions with his friends, he ordered her to stay in the trailer they were living in with her daughters because he did not know what to say when people asked him if they were his daughters. The petitioner does not state that her husband actually locked her and her daughters in the trailer, kept them inside by other forceful means, or threatened them with physical harm if they came outside. The petitioner's statements on appeal do not describe behavior by her husband that amounts to extreme cruelty as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The evidence in the record does not demonstrate that the petitioner was battered or subjected to extreme cruelty by her U.S. citizen spouse during their marriage. Consequently, the petitioner is ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and her 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.