



U.S. Citizenship
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUL 11 2006
EAC 05 088 52919

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:
[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition on October 14, 2005, finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse.

The petitioner filed a timely appeal on November 14, 2005.

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 [Secretary of Homeland Security] that—

- (aa) the marriage or the intent to marry the 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 record reflects that on November 12, 1998, the petitioner was arrested by the Service and placed in proceedings. The petitioner married United States citizen [REDACTED] on January 17, 1999, in Newark, New Jersey. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on March 4, 1999.¹ The petition was approved on April 9, 1999. Proceedings against the petitioner were administratively closed on June 2, 1999, in order for the Service to consider the petitioner's eligibility based upon his approved Form I-130.

On June 5, 2001, the petitioner and his spouse appeared for an interview before a Service officer. Due to discrepancies noted during the interview, the petitioner and his spouse were interviewed for a second time on January 11, 2002. Based upon the interviews and the discrepancies noted, the director issued a notice of intent to revoke approval of the petition. The director revoked approval of the Form I-130 on December 31, 2003. The petitioner was issued a second Notice to Appear on February 11, 2004. The petitioner's spouse

¹ Receipt number EAC 99 112 52831.

filed a second Form I-130 on the beneficiary's behalf on May 30, 2004.² The Form I-130 remains unadjudicated.

The petitioner filed the instant Form I-360 on January 31, 2005, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his United States citizen spouse during their marriage.

As it relates to his claim of battery and extreme cruelty, with his initial submission, the petitioner submitted a personal statement in which he indicated that his spouse called him names and threatened to call immigration. The petitioner also indicated that due to his spouse's job, she was transferred to North Carolina and gave the petitioner "flimsy" excuses as to why he could not go to visit or she would not come back to visit. The petitioner also indicated that he suspected his spouse "was seeing someone down there."

The director found that the petitioner's initial submission was not sufficient to establish his eligibility and on June 10, 2005, requested the petitioner to submit further evidence to establish that he was battered by or subjected to extreme cruelty by his spouse. The petitioner responded to the director's request on September 12, 2005 and submitted a psychological assessment.

On October 14, 2005, after reviewing the evidence contained in the record, including the evidence submitted in response to the director's request, the director denied the petition without the issuance of a notice of intent to deny (NOID) in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii),³ finding that the petitioner had failed to establish that he was battered by or subjected to extreme cruelty by his spouse.

The petitioner, through counsel, filed the instant appeal on November 14, 2005, with a brief. On appeal, counsel claims that the petitioner's psychological assessment has been "ignored," that the petitioner's statements are "genuine and heartfelt," and that the psychologist is "particularly respected in the analysis of immigrants." We are not persuaded by counsel's statements. First, neither the psychologist's credentials nor the truthfulness of the petitioner's statements has been in question. Rather, the director determined that the petitioner's statement and the assessment were not adequate to establish a claim of battery or extreme cruelty. While counsel asserts that the psychological assessment was ignored, it must be noted that the director dedicated nearly half a page to a discussion of the contents of the assessment.

On appeal, counsel refers to the statements of the psychologist in which she indicates:

. . . the difficulties and confusing messages that he has received during the course of his marriage to [REDACTED] have left [the petitioner] feeling sad, stuck, distrusting of other

² Receipt number EAC 04 158 52206.

³ The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

peoples [sic] intentions, withdrawn from social interactions with other people, unable to talk with anyone about his marital problems because he feels embarrassed

* * *

[The petitioner] is a 50 year-old Jamaican man who is struggling with competing feelings of sadness, frustration, and a sense of powerlessness. [The petitioner's] presentation and symptoms are consistent with the diagnosis of Partner Relational Problem. Furthermore, this ongoing stressor affects his daily psychosocial functioning in significant ways.

Counsel then argues:

The conclusions of [redacted] directly counter the decision which seems to consider what the Petitioner has gone through as "common marital strife." We must respectfully point out that what is "common marital strife" to one person may be extreme cruelty to another. This is why self-petitions must be decided on a case by case basis and not in a cookie cutter fashion.

* * *

The petitioner was a victim of a continual pattern of being used for economic gain and being abandoned and insulted. Ultimately, his wife refused to continue to support his immigration case.

While we agree with counsel that each case must be decided on its own merits, a review of the petitioner's claims in this case are not sufficient to establish that the petitioner has been battered or that he was subjected to extreme cruelty. The petitioner's claims of being called names and threatened with his immigration status are not corroborated by the assessment or other independent evidence. We do not find that these general statements are sufficient to establish a claim of extreme cruelty.

Further, the petitioner's claim that his spouse "abandoned" him by taking a job in a separate state and may have been seeing someone else, also do not establish a claim of extreme cruelty. While counsel alleges that the petitioner was used for "economic gain," we do not find the record supports such a claim. In his personal statement, the petitioner states that his spouse "was always pressuring me for money for her children's needs. I did not mind helping her with her children but I felt she had to make some more of an effort herself." From this statement, it is clear that the petitioner had access to his own money and the freedom to make decisions regarding how the money was spent. Such facts do not establish that the petitioner's spouse had economic control over the petitioner. 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).

Finally, regarding the psychological assessment, while we do not dispute the findings of the psychologist that the "difficulties and confusing messages that he has received during the course of his marriage . . . have left

him feeling sad, stuck, distrusting . . . withdrawn . . . and embarrassed,” the petitioner has not shown that such ailments or feelings were *caused* by being subjected to extreme cruelty by his spouse. The petitioner’s claims do not sufficiently demonstrate that he was the victim of any act or threat of violence, that he was forcefully detained by his spouse, that he was psychologically or sexually abused or exploited, or that his spouse’s actions were a part of an overall pattern of violence. Accordingly, we concur with the finding of the director that the record is insufficient to establish that the petitioner was subjected to extreme cruelty by his spouse.

Despite our support of the director’s findings, however, the director’s decision cannot stand because of the director’s failure to issue a NOID to the petitioner prior the issuance of the denial. Although the director’s decision was based upon the single issue discussed above, we find an additional issue that must be addressed on remand. Specifically, evidence in the record reflects that the petitioner may be subject to section 204(g) of the Act which states:

Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act states:

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien’s status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending⁴ regarding the alien’s right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien’s admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In

⁴ See *Blackwell v. Thornburgh*, 745 F.Supp. 1529, 1533-37 (C.D. Cal. 1989); *Minatsis v. Brown*, 713 F.Supp. 1056 (S.D. Ohio 1989); *Matter of Enriquez*, 19 I&N Dec. 554 (BIA 1988); and Legal Opinion, General Counsel, CO 204.21-P (Oct. 17, 1990), reprinted in *68 Interpreter Releases* 89 (Jan. 18, 1991) in which CIS determined that a case is also deemed pending even if it is administratively closed.

accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide

As noted previously, the marriage between the petitioner and her citizen spouse was entered into while the petitioner was in proceedings. While the director made an affirmative finding regarding the petitioner's claim that he entered into the marriage in good faith, we do not find the evidence in the record supports a finding that by clear and convincing evidence the petitioner has established that his marriage was bona fide. The petitioner offers no statement regarding his courtship with his spouse or his intent at the time of the marriage and indicates only that he married his spouse in 1999. While the record contains three tax documents, a single bank statement and copies of the petitioner's and his spouse's ATM cards, the record does not contain any joint leases, insurance documents or other documentation which would establish, by clear and convincing evidence, that the petitioner entered into his marriage in good faith.

In accordance with the above discussion, the decision of the director is withdrawn. The case will be remanded for the purpose of the issuance of a notice of intent to deny as well as a new final decision to both the applicant and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.