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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 31 2006

EAC 05 071 52741

IN RE:

Petitioner:



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, Chief  
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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that her husband battered or subjected her to extreme cruelty during their marriage.

On appeal, the petitioner submits her third, revised affidavit.

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) states, in pertinent part:

*(vi) 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 guidelines 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.

The petitioner in this case is a native and citizen of Chile who last entered the United States on May 7, 2003 as a nonimmigrant visitor (B-2). On May 16, 2003, the petitioner married [REDACTED] a U.S. citizen, in Delaware. On January 8, 2005, the petitioner filed this Form I-360. On May 19, 2005, the director issued a notice requesting additional evidence that Mr. [REDACTED] subjected the petitioner to battery or extreme cruelty. Counsel requested and was granted additional time to respond and on August 19 and August 24, 2005 submitted further evidence. In her letter dated August 23, 2005, former counsel stated that the petitioner and Mr. [REDACTED] were divorced on August 10, 2005. On October 18, 2005, the director denied the petition because the record did not establish the requisite battery or extreme cruelty. Counsel timely appealed.<sup>1</sup>

On appeal, counsel submits a third, revised affidavit of the petitioner. We concur with the director's determination and find that the petitioner's additional statements do not overcome the reasons for denial. Nevertheless, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID) prior to denying the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

#### *Battery or Extreme Cruelty*

As evidence of battery or extreme cruelty, the petitioner initially submitted her own affidavit, the affidavit of her mother and a letter from her psychiatrist. In response to the director's request for additional evidence, the petitioner submitted her second, revised affidavit, affidavits from three friends,

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<sup>1</sup> Ms. [REDACTED] represented the petitioner below. However, the petitioner's Form I-290B was filed by [REDACTED] and [REDACTED] also with the [REDACTED] and was submitted with a Form G-28 signed by Ms. [REDACTED] but not signed by the petitioner. Without a properly completed Form G-28, we are unable to recognize Ms. [REDACTED] or Ms. [REDACTED] as representing the petitioner in these proceedings.

and a revised letter from her psychiatrist. We concur with the director's determination that these documents do not establish battery or extreme cruelty.

In her first affidavit dated December 30, 2004, the petitioner explains that Mr. [REDACTED] family did not approve of her or their marriage, which caused problems in their relationship. The petitioner describes one incident in January 2004 when Mr. [REDACTED] waited in the car while she went into a store. When she returned, the petitioner states that there was a huge welt on Mr. [REDACTED] forehead and he told her that he was sick of his family fighting against his choices and that he had banged his head against the gearshift. The petitioner explains that when she kissed his forehead and a little girl walking by pointed them out, Mr. [REDACTED] screamed an expletive at the little girl, which frightened the petitioner.

The petitioner reports that they got into an argument when Mr. [REDACTED] later told her that he was sick of defending their relationship and wanted some time. After Mr. [REDACTED] returned to college in another state, the petitioner explains that they spoke on the telephone frequently, but Mr. [REDACTED] would sometimes try to threaten her by using her immigration status against her and told her he was using a lot of drugs, which he knew she did not agree with. The petitioner states that by the end of the semester, she and Mr. [REDACTED] had only sporadic conversations in which he would yell at her for being possessive or mean. The petitioner states that she found out that Mr. [REDACTED] was dating someone else and that she last saw him in the summer of 2004 when he professed his love, but showed her a bag of marijuana and told her he was thinking of filing for divorce. The petitioner reports feeling suicidal through the spring and summer of 2004.

In her second affidavit dated August 16, 2005, the petitioner states that Mr. [REDACTED] was controlling and that everything had to be on his terms, for example, their "secret" wedding. The petitioner reports that Mr. [REDACTED] was very jealous and states that on one occasion he would not talk to her for days because she remarked that a certain celebrity was attractive. The petitioner explains that she could never make plans with friends because Mr. [REDACTED] would break them and that she could not wear the clothes she liked because Mr. [REDACTED] would insult her appearance. The petitioner states that Mr. [REDACTED] would tell her to "sit down and be quiet" and would go out and do drugs with his friends when he knew she strongly disapproved. The petitioner further states that Mr. [REDACTED] would punch the walls every time he got upset and would do things to make her feel bad.

In her third, revised affidavit submitted on appeal, the petitioner describes one incident where Mr. [REDACTED] did not like the pants she was wearing, threw all of her clothes down the stairs and then yelled at her to pick them up. The petitioner further explains that on the day Mr. [REDACTED] hit his head on the car gearshift, he also threatened to jump out of the moving car and opened the car door while the car was moving. The petitioner reports feeling terrified by Mr. [REDACTED] behavior. The petitioner further explains that Mr. [REDACTED] never stood up to his family on her behalf. The petitioner states that when she got upset with Mr. [REDACTED] for going out with his friends and leaving her at home alone, he would get mad at her and threaten to kill or hurt himself.

██████████ the petitioner's mother, states that her daughter called her in Chile after the former couple's argument in January 2004 and that after Ms. ██████████ returned to the United States in February 2004, she noticed that the petitioner was not as happy as before. Ms. ██████████ states that Mr. ██████████ once visited her at work and told her that the petitioner was too much for him to deal with and that he needed time. In June 2004, Ms. ██████████ reports that Mr. ██████████ told her that he wanted to move on with his life.

██████████, the petitioner's friend, states that one evening when they were ready to go out, the petitioner talked to Mr. ██████████ and then her entire demeanor changed, she seemed very sad and did not go out. Ms. ██████████ reports that the petitioner changed the way she dressed to cover more of her body because of Mr. ██████████ comments. ██████████ the petitioner's friend and classmate, states that Mr. ██████████ would call the petitioner constantly and that over the course of speaking with him, the petitioner would become ill, complain of a headache and go home. ██████████ the petitioner's friend, states that when they got dressed up to go to a club, Mr. ██████████ would insult the petitioner's appearance and sometimes the petitioner would not go out, but would stay home and cry. Ms. ██████████ reports seeing Mr. ██████████ on the day he hit his head on the gearshift and saw his wounded forehead. Ms. ██████████ states that the petitioner often called her crying when the petitioner and Mr. ██████████ lived together and that the petitioner often stayed at Ms. ██████████ house rather than sleep with Mr. ██████████. Ms. ██████████ describes two incidents where Mr. ██████████ embarrassed the petitioner in front of others and states that the petitioner often called her to cancel their plans because they conflicted with Mr. ██████████ wishes.

In his letter dated December 13, 2004, Dr. ██████████ the petitioner's psychiatrist, states that he began treating the petitioner on September 28, 2004. Dr. ██████████ states, "She was first seen with symptoms of anxiety and depressed mood that were largely ascribed to her marriage. She reported verbal and psychological abuse from her spouse, particularly during the period of February 2004 to July 2004." Dr. ██████████ diagnoses the petitioner with Adjustment Disorder with Anxiety and Depressed Mood and Major Depressive Disorder and notes that the petitioner also meets the criteria for Panic Disorder with Agoraphobia. Dr. ██████████ states that the petitioner:

reports verbal abuse from her spouse, taunting by him and what would appear to be manipulation (conscious or unconscious) in the manner in which he would say one thing and act one way on a given day and then on the following day act the opposite and say the opposite. . . . She reports nightmares regarding her experiences from that time and flashbacks as well.

In his revised letter dated August 13, 2005, Dr. ██████████ adds, "Her abuse by her spouse specifically involved loud verbal abuse, threats of physical and emotional harm with escalation if [the petitioner] tried to leave the room of the incident, possessive and controlling behavior both in his presence and away from it." In her own testimony, the petitioner does not discuss any incidents where Mr. ██████████ threatened to physically harm her if she tried to leave.

The present record does not establish that Mr. ██████████ subjected the petitioner to battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi). The affidavits do not

establish that Mr. [REDACTED] ever threatened the petitioner herself with violence or physical injury. The record also does not demonstrate that Mr. [REDACTED] nonviolent behavior was part of an overall pattern of violence directed at the petitioner. Dr. [REDACTED] letters indicate that Mr. [REDACTED] behavior was the primary cause of the petitioner's adjustment disorder and depression, but his letters do not establish that Mr. [REDACTED] subjected the petitioner to battery or extreme cruelty. Dr. [REDACTED] does not discuss the petitioner's behavior, affect or mental health conditions as being consistent with having survived domestic violence. Moreover, Dr. [REDACTED] curriculum vitae shows that the majority of his professional experience has been in addiction psychiatry and does not indicate that he has any specialized training or experience in diagnosing and treating survivors of domestic violence. Apart from the affidavits and Dr. [REDACTED] letters, the petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). For example, the petitioner does not state that she ever called the police or took other legal steps to end Mr. [REDACTED] alleged abuse and does not explain that Mr. Adkins's threats, her fear of his reaction or other reasons prevented her from taking such steps.

The present record does not demonstrate that Mr. [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii) of the Act. Nonetheless, the petition will be remanded to the director for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of her case.

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 that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.