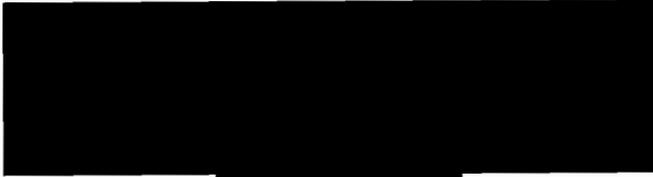




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
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FILE: [REDACTED]
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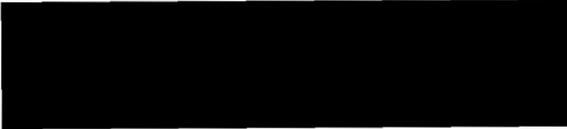
Office: VERMONT SERVICE CENTER

Date: MAY 17 2006

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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of Venezuela who last entered the United States as a nonimmigrant visitor (B-2) on March 29, 2001. On February 25, 2002, the petitioner married [REDACTED] a U.S. citizen, in Miami, Florida. The petitioner filed a Form I-360 on September 17, 2004 seeking 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 U.S. citizen spouse. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a notice on March 23, 2005 requesting, *inter alia*, evidence that [REDACTED] subjected the petitioner or her child to battery or extreme cruelty. On May 17, 2005, the petitioner responded with additional testimonial evidence. On July 6, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty. On appeal, counsel submits a two-page letter and an additional sworn statement by the petitioner. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty and find that the additional testimony submitted on appeal does not overcome this basis for denial. Nonetheless, the case will be remanded for issuance of a Notice of Intent to Deny (NOID).

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 or the alien's child 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.

Battery or Extreme Cruelty

The petitioner initially submitted short letters from her brother, friends and pastor. [REDACTED], the petitioner's friend, states that [REDACTED] had a drug addiction, that the health of the couple's baby was at risk and that the petitioner was affected psychologically and economically after [REDACTED] left. [REDACTED], the petitioner's brother, affirms that [REDACTED] ignored his responsibilities as a husband and parent due to his drug addiction problem and explains that he has been providing financial and moral support to the petitioner and her daughter. [REDACTED] states that the petitioner "was severely affected by her husband's persecution" and that "according to her words, had to abandon her husband because he was a drug abuser and she feared for her life." [REDACTED] another friend of the petitioner, states that [REDACTED] lost jobs and abandoned the petitioner when she was pregnant. These letters indicate that [REDACTED] had a drug abuse problem, which negatively impacted the petitioner and her baby. None of the authors state, however, that they ever witnessed [REDACTED] physically assault or subject the petitioner or her child to extreme cruelty.

In response to the director's request for additional evidence, the petitioner submitted her own statement, an additional letter from her brother, a letter from a third friend, a letter from the Victim Services Center, and a "Biopsychosocial Assessment." In her statement, the petitioner explains that shortly after their marriage, her husband began using drugs. She states that he repeatedly lost jobs and that she had to support him. The petitioner reports that one night when she tried to stop [REDACTED] from going out by picking up the telephone and saying that she was going to call the police, he took the telephone from

her and threatened to “call immigration” to report her. When she tried to block the door, the petitioner states that [REDACTED] pushed her very hard onto the bed and left. The petitioner states that [REDACTED] pawned their belongings, including their wedding rings to buy drugs. She states that on one occasion when he was smoking crack, [REDACTED] took her very roughly and forced her to have sex. Another time, the petitioner states that [REDACTED] suddenly woke her up by grabbing her arms very hard and scared her. The petitioner states that when she told [REDACTED] she was pregnant, he offended her by saying the baby was not his. The petitioner reports that [REDACTED] disappeared during her pregnancy, visited her for two days when their baby was born, but then disappeared again. The petitioner reports feeling guilty because her daughter does not have a father to count on, feeling as though she does not fit in, and being scared of [REDACTED] returning because he threatened several times to take their baby with him and she is afraid he may do so or may otherwise harm her or their child.

In his second letter, the petitioner’s brother states that the petitioner and [REDACTED] lived with him and that he and the petitioner had to hide their valuables to prevent [REDACTED] from pawning them to get money to buy drugs. [REDACTED] also states that [REDACTED] always suspected the petitioner of infidelity, constantly called to check on her, acted very meanly to her and asked her for money for everything. [REDACTED] confirms that the petitioner has changed a lot as a result of [REDACTED] behavior. [REDACTED] states that the petitioner is often depressed, always scared of [REDACTED] returning, and sometimes isolates herself because she feels guilty and thinks that she is different from other people.

[REDACTED], a friend of the petitioner, states that he was unaware of the petitioner’s marital situation until she called him one day and told him “the horrible situation she was facing.” He states that he did not have contact with her again until after her baby was born. [REDACTED] also states that the petitioner has changed a lot, is scared, depressed and isolated herself for a long time.

Although [REDACTED] second letter and [REDACTED] letter confirm that the petitioner became depressed, isolated herself and was scared as a result of her husband’s behavior, they do not fully corroborate the petitioner’s statements or establish that [REDACTED] battered or subjected the petitioner or her child to extreme cruelty during their marriage.

In a letter dated May 5, 2005, [REDACTED], Programs Manager at the Victim Services Center (VSC) in Miami, states that the petitioner was admitted to VSC on April 20, 2005 “to reduce and/or eliminate feelings of guilt and depression that [the petitioner] claims as being a result of domestic abuse.” [REDACTED] adds that the petitioner has attended two of the four psycho-educational groups required by VSC. This letter indicates that the petitioner sought help from VSC approximately two years after she and [REDACTED] separated, but offers no substantive insight or analysis into the petitioner’s individual condition that would support her claim of battery and extreme cruelty.

The three-page “Biopsychosocial Assessment” of the petitioner written by [REDACTED] summarizes the petitioner’s background and marital relationship as reported to [REDACTED] by the petitioner, but offers little insight into the petitioner’s condition. [REDACTED] only clinical observation is that “[the petitioner] presents with severe depressive and anxious symptomatology. . . . [The petitioner] presents

the profile of an abused individual and that needs to be addressed in this course of treatment.” The petitioner states that she met with [REDACTED] on one occasion nearly two years after she and [REDACTED] separated. The record contains no documentation of [REDACTED] professional credentials, which would indicate that she has received specialized training or has extensive experience in diagnosing and treating survivors of domestic violence. For these reasons, [REDACTED] assessment is of little probative value.

In response to the director’s request for additional evidence, the petitioner also submitted a copy of her consent for her records from the Healthy Connections Community Mental Health Center to be released to “Immigration Office,” but the record is devoid of any such records documenting the petitioner’s mental health treatment at this center.

On appeal, the petitioner submits a second statement in which she explains that every time she told [REDACTED] that she was going to call the police, he threatened her by saying that they would not believe her because he was the American and that they would deport her. The petitioner states, “I firmly believed in his words and it created doubts in me so I never tried to do something about it.” The petitioner further states that her husband always suspected her of infidelity and once told her that he would kill her if he saw her with another man. She states that [REDACTED] constantly called her on her cellular telephone when she was out of the house, would stand close to her and try to listen to her telephone conversations with other people and would get upset when she spoke to her family in Spanish because he could not speak Spanish and was paranoid that she was discussing their marital problems.

The petitioner explains that [REDACTED] always asked for her forgiveness and promised to change, but never did. The petitioner explains that she accepted abuse from [REDACTED] because she loved him and because she was scared of him because he once told her that he beat one of his women when she disappointed him. The petitioner reiterates that as a result of [REDACTED]’s actions, her life changed dramatically and she became very insecure, afraid, felt guilty and depressed. The petitioner submits no additional evidence to corroborate her statements on appeal.

The present record does not establish that [REDACTED] battered or subjected the petitioner or her child to extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner states that her husband pushed her hard on one occasion and forced her to have intimate relations that made her feel disgusted and ashamed. The record contains no probative evidence to corroborate these incidents and their physical or psychological effect on the petitioner. The petitioner states that her husband pawned their belongings, that she had to give him money, that he accused her of infidelity, called her constantly and tried to listen in on her telephone conversations, and that he abandoned the petitioner during her pregnancy and shortly after the birth of their daughter. The petitioner’s brother, who lived with the petitioner and [REDACTED], only partially confirms these statements and the present record does not establish that [REDACTED]’s behavior rose to the level of psychological abuse or that his actions were part of an overall pattern of violence. The letters of the petitioner’s friends and her brother attest to the petitioner’s depression and social isolation, but they do not establish that the petitioner’s

condition was caused by [REDACTED] battery or extreme cruelty rather than by the effects of his drug addiction and abandonment.

Although the petitioner submitted some evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv), these documents are of little probative value. The letters from [REDACTED] and the consent to release form indicate that the petitioner did not seek mental health care until nearly two years after [REDACTED] departure and the documents provide no substantive analysis or credible diagnoses to support the petitioner's claim that her condition was caused by [REDACTED] battery and extreme cruelty. While the petitioner credibly explains that her husband's threats stopped her from calling the police, she does not fully explain her delay in seeking other forms of assistance. On appeal, the petitioner states, "I never looked for help because I was afraid of doing it and I isolated myself for a long time." The petitioner does not further describe or discuss her fear and why it prevented her from getting help until after the director requested additional evidence.

The present record fails to establish that [REDACTED] subjected the petitioner or her child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi). The petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

However, the case will be remanded because the director failed to issue a NOID before denying the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which 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.

Accordingly, the case will be remanded for issuance of a NOID, 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.