



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly **unwarranted**
invasion of **personal privacy**

PUBLIC COPY



B9

FILE: 
EAC 04 039 50719

Office: VERMONT SERVICE CENTER

Date: **MAY 19 2006**

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:

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, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Colombia who was paroled into the United States on January 3, 2000. The former Immigration and Naturalization Service revoked the petitioner's parole on July 25, 2001. The petitioner filed a Form I-360 on November 22, 2003 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 his United States citizen former spouse. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a notice on December 22, 2004 requesting the petitioner to submit evidence that, *inter alia*, his ex-wife subjected him to battery or extreme cruelty during their marriage. In his February 25, 2005 response, the petitioner stated that he was unable to provide the requested documentation. On July 28, 2005, the director denied the petition because the record did not establish that the petitioner's ex-wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a statement and a summary of the Violence Against Women Act of 2005 written by the National Task Force to End Sexual and Domestic Violence Against Women. For the reasons discussed below, we concur with the director's determination that the petitioner has not established the requisite battery or extreme cruelty. Nonetheless, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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).

Pursuant to section 204(a)(1)(A)(iii) (II)(aa)(CC) of the Act, an alien who has divorced a United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person:

who was a bona fide spouse of a United States citizen within the past 2 years and –

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.

Section 204(a)(1)(A)(iii) (II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC).

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 record shows that the petitioner married [REDACTED] on May 16, 1996 in the Bronx, New York and that the couple was divorced on December 19, 2001. In his affidavit, the petitioner states that on September 16, 1998, he left work earlier than usual and came home to find [REDACTED] having intimate relations with another woman. He states that [REDACTED] was very angry and rude to him and eventually left their home with the other woman. The petitioner reports that [REDACTED] came back two days later to retrieve her belongings and left a note for him with her new address. The petitioner explains that he went to see [REDACTED] in an attempt to reconcile, but that [REDACTED] only responded with insults. As a result, the petitioner states that he became very depressed and could not

work for 30 days, but that after about five months he regained his “normal mental health and could continue enjoying life almost as good as before the said incident took place.” [REDACTED], the petitioner’s former landlord, states that she and her husband used to live in the same house as the petitioner and [REDACTED], that [REDACTED] was frequently visited by her girlfriends, that the petitioner told her that he found his wife having intimate relations with a girlfriend, and that the petitioner was very depressed and had emotional problems after this incident. [REDACTED] does not indicate that she ever witnessed [REDACTED] subjecting the petitioner to battery or extreme cruelty.

behavior, as reported by the petitioner and [REDACTED] does not rise to the level of extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not state that [REDACTED] ever subjected him to actual or threatened physical violence or forceful detention. The record also does not establish that [REDACTED] behavior amounted to psychological abuse or that she engaged in intimate relations with other women as part of a pattern of psychological violence against the petitioner. Moreover, the record contains no corroborative documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and the petitioner has not explained why such evidence does not exist or is unobtainable.

On appeal, the petitioner contends:

Nothing describes abuse better than to see a marital partner, your wife, slap with insults and disgrace her husband. Especially, if the husband had to swallow his pride because he is living in the United States where he is looking to live as a permanent resident, and while waiting for his green card. . . . Here we find a victim who found himself in a situation that would have caused death to his wife in the hands of any ordinary man in a marriage. . . . Congress or any law was not designed to discriminate and punish those for being the male victim in the relationship. The description of what happened that one day was the breaking point. There were countless of other incidents, but because the appellant herein is a male, he is not allowed by the normal standards to mention them. Hundreds of other situations and dates caused appellant to anger, but he never allowed her to lead him there, instead he kept it to himself like a “man.”

Again, the record does not demonstrate that [REDACTED] purported infidelity with another woman rose to the level of extreme cruelty pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi), 204.2(c)(2)(iv). Although the petitioner claims on appeal that there were “hundreds” or “countless” other unspecified incidents, he did not discuss them in his affidavit submitted below and does not discuss or document them on appeal. While the petitioner may be reluctant to describe and document such events, the burden of proof in these proceedings remains entirely with him. Section 291 of the Act, 8 U.S.C. § 1361. Finally, the petitioner’s intimation that he is being discriminated against due to his gender is unfounded. The record simply does not support his claim that the single, undocumented incident of his wife’s intimate relations with another woman during their marriage rose to the level of extreme cruelty. We fail to see how a different conclusion would result had the genders of the petitioner and [REDACTED] been reversed. An extramarital affair, regardless of sexual

orientation, does not demonstrate extreme cruelty unless it is accompanied by violence or is part of an overall pattern of violence perpetrated against the self-petitioner pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Accordingly, the present record does not demonstrate that [REDACTED] subjected the petitioner 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), 204.2(c)(2)(iv).

The present record fails to establish that Ms. Morales battered or subjected the petitioner to extreme cruelty during their marriage. 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 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 his 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.