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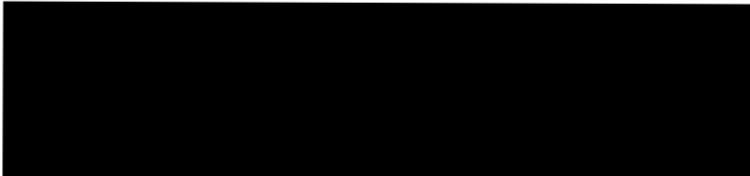
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 05 188 53004

Office: VERMONT SERVICE CENTER

Date: NOV 06 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. Wieman, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 because the petitioner did not establish that her husband battered or subjected her to extreme cruelty.

On appeal, the petitioner submits additional evidence.

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 a child of 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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which 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 further explicated 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 Haiti who entered the United States on June 26, 2002 as a nonimmigrant visitor (B-2). On December 18, 2002, the petitioner married C-C-¹, a U.S. citizen, in New York. On June 17, 2005, the petitioner filed this Form I-360. On September 30, 2005, the director issued a Request for Evidence (RFE) of battery or extreme cruelty. The petitioner timely responded. The director denied the petition for lack of the requisite battery or extreme cruelty.

On appeal, the petitioner claims that her husband's behavior constituted extreme cruelty and she submits sworn statements from two friends. We concur with the director's conclusion. The petitioner's claims and the evidence submitted on appeal do not overcome the ground for denial. Nonetheless, the petition will be remanded because the director denied the case without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

The petitioner initially submitted a letter in which she states:

Although my husband had committed numerous acts that would have put him in jail for a long time our custom and the love that I have for him allow me to endure as much. However[,] he forced me to step out of the house in the middle of a cold night until the police show-up and

¹ Name withheld to protect individual's identity.

asked him under treat [sic] of being arrested he let me back in and left the house ever since. . . .
This is the last even [sic] that break our relation.

The petitioner does not specify what actions of her husband would have put him in jail and she provides no probative details regarding the incident where he forced her to step outside. The petitioner states that the police intervened, she does not submit a police report regarding this incident. Although she is not required to do so, the petitioner does not explain why such a report does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). Apart from her own brief statement, the petitioner initially submitted no other evidence relevant to her claim of battery or extreme cruelty. In response to the RFE, the petitioner submitted documents related to her daughter and her child support case, but no evidence relevant to her claim of battery or extreme cruelty.

On appeal, the petitioner submits sworn statements from her friends, [REDACTED] and [REDACTED]. Mr. [REDACTED] states that the petitioner stayed with him for two days and he reports: "I called her husband for a dialogue. He came as we started to talk he was to hit [the petitioner]. I told him that I was going to call the police and he left." Mr. [REDACTED] provides no further details and the petitioner does not discuss this incident in her own letter. Mr. [REDACTED] states that he picked up the petitioner and her daughter on the night that the petitioner's husband "pushed her out on the streets." Mr. [REDACTED] states that the petitioner has been subjected to extreme cruelty, but he provides no probative details regarding the occasion when the petitioner's husband made her leave their home or any other incidents of abuse. The statements of the petitioner and her friends fail to establish that the petitioner's husband battered or subjected her or her daughter to extreme cruelty, as specified in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner failed to demonstrate her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. 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.