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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

**PUBLIC COPY**

*Bq*

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

EAC 06 037 52438

**JUL 24 2007**

IN RE:

Petitioner:

[REDACTED]

PETITION: Petition for 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.

*Maura Deardnick*  
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 appeal will be dismissed.

The petitioner seeks immigrant classification under 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 battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that his wife battered or subjected him or his child to extreme cruelty during their marriage.

On appeal, counsel submits a four-page letter and copies of documents previously submitted below.

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 . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Venezuela who entered the United States on March 23, 2003 as a nonimmigrant visitor (B-2). On August 16, 2004, the petitioner married R-R-<sup>1</sup>, a U.S. citizen. R-R- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on December 20, 2005. The petitioner filed this Form I-360 on November 14, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty. The petitioner, through counsel, responded with a request for additional time to submit further evidence. On May 23, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite battery or extreme cruelty. The NOID acknowledged counsel's response to the RFE and granted the petitioner 60 days to respond. The petitioner, through counsel, timely submitted additional evidence. On July 21, 2006, the director denied the petition and counsel timely appealed.

On appeal, counsel requests that the petitioner be allowed to testify in support of his case. The petitioner initially submitted no testimony with his Form I-360. In response to the director's specific request for the petitioner's personal statement in the RFE, the petitioner submitted a six-paragraph statement. The petitioner submitted no further testimony in response to the NOID and submits no affidavit or additional statement on appeal. Counsel presents no reason why the petitioner should be

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<sup>1</sup> Name withheld to protect individual's identity.

allowed to testify and we find none. The record of proceedings fully represents the facts and issues in this matter. Accordingly, counsel's request is denied.

Counsel also claims that the totality of the evidence submitted below established that the petitioner's wife subjected him to extreme cruelty. Upon full review, the evidence submitted below fails to establish the requisite battery or extreme cruelty and we concur with the director's determination.

*Battery or Extreme Cruelty*

The record contains the following evidence relevant to the issue of battery or extreme cruelty:

- The petitioner's personal statement notarized on June 28, 2006;
- Printout of the Broward County Sheriff's Office documenting a call to the police made by the petitioner on August 26, 2005;
- Broward Sheriff's Office Event Report for an incident on August 24, 2005;
- Petitioner's petition for an injunction for protection against domestic violence filed on August 29, 2005 and the corresponding court order denying the petition on the same date;
- Photographs of broken windows, a bent door jamb and broken glass in the petitioner's home and scratches on the door of the petitioner's vehicle;
- Printouts from the Clerk of Courts, Eleventh Judicial Circuit of Florida, showing the petitioner's wife's 25 charges and six convictions for various criminal offenses between 1989 and 2003; and
- Printout from <http://courtcon.co.palm-beach.fl.us> regarding a petition for injunction against repeat domestic violence filed by another man against the petitioner's wife in 1997 that was dismissed after a hearing.

In his personal statement, the petitioner reports that his wife subjected him to "mental and emotional abuses [that] became stronger as time passed. They were verbal and psychological." The petitioner states, "My USC Spouse would insult me and threaten me for no apparent reasons. . . . There was a time I have to step away and physically leave the premises and my USC Spouse was on the brink of physically assaulting me." The petitioner further reports that a month after their separation, his wife began calling him at work to ask for money and threaten him. On one occasion, the petitioner states that his wife broke the windows at his home and damaged his car while he was at work.

The petitioner describes no specific incidents of his wife's purported abuse in probative detail and the remaining relevant documents fail to support his claim. The Broward County Sheriff's Office printout states that on August 26, 2005, the petitioner called the police regarding "phone threats from known female, ongoing" and reports the disposition of the incident as code "B," which, according to an accompanying document, means:

Complainant is gone on arrival and there is no indication of a crime or suspicious or unusual circumstance; complainant refuses to cooperate in cases that cannot proceed without the

cooperation of the complainant; canceled by complainant in non-criminal calls; false reports; wrong or no such address; no violations or unusual circumstances observed, etc.

The Broward Sheriff's Office Event Report states that on August 24, 2005, the petitioner told the reporting officer that his wife threw rocks through his apartment windows and had called him at work and told him she was going to smash his windows and scratch his vehicle. The reporting officer observed that rocks had smashed two of the windows of the petitioner's apartment and that the petitioner's vehicle was scratched on the left side. The reporting officer states that an investigation revealed that the petitioner's wife committed the damage and that he advised the petitioner on how to obtain a restraining order and file a misdemeanor complaint.

While the police report shows that the petitioner's wife damaged his apartment and vehicle, the subsequent court order indicates that this incident alone did not rise to the level of extreme cruelty. The Circuit Court for the Seventeenth Judicial District of Broward County, Florida denied the petitioner's petition for an injunction for protection against his wife's domestic violence on the day the petition was filed, August 29, 2005. The court order states:

Petitioner has failed to allege facts sufficient to support the entry of an injunction for protection against domestic, repeat, dating, or sexual violence because: Petitioner has failed to allege any overt acts by Respondent [the petitioner's wife] to indicate imminent violence, which would constitute domestic violence under Florida Statute[.]

The printouts regarding the criminal charges and prosecutions of the petitioner's wife show that she has an extensive criminal record. However, the most recent charge was filed on September 9, 2003. The petitioner does not state the date he met his wife and the record does not otherwise indicate that the petitioner was acquainted with his wife in September 2003 or at any earlier time. The evidence does not show that the petitioner or his child was a victim or was otherwise affected by any of his wife's criminal offenses.

Apart from the August 24 and 26, 2005 incidents, the record contains no documentary evidence of any other instances of alleged abuse inflicted upon the petitioner or his child by his wife. The petitioner's brief, general references to his wife's "verbal and psychological" abuse and his cursory description of one, unspecified incident where his wife "was on the brink of physically assaulting" him fail to provide probative details sufficient to establish that the actions of the petitioner's wife rose to the level of battery or extreme cruelty, pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner submitted no further documentary or testimonial evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Although he 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. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

The petitioner has failed to demonstrate that his wife subjected him or his child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The

petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.