



U.S. Citizenship
and Immigration
Services

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DATE: APR 04 2012 Office: VERMONT SERVICE CENTER

FILE:



RE:

Petitioner:



PETITION: Petition for Immigrant Abused 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

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 determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen (USC) spouse. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, an additional affidavit, and additional and previously submitted documentation.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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 pursuant to Section 204(a)(1)(A)(iii) of the Act are further set out 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 set forth 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 AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Facts and Procedural History

The petitioner is a native and citizen of the Commonwealth of Dominica. He entered the United States on or about July 8, 1999 as a B-2 visitor. On March 10, 2008 he married J-S,¹ the claimed abusive United States citizen (USC). On August 2, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The director issued a request for evidence (RFE) and upon review of the record, including the petitioner's response to the RFE, the director denied the petition. On appeal, the petitioner provides an additional affidavit, articles on domestic abuse, and previously submitted documentation, among other items.

¹ Name withheld to protect the individual's identity.

Battery and/or Extreme Cruelty

The director considered the documentation previously submitted, including the petitioner's testimony and the affidavits submitted on his behalf. The director determined based on the evidence in the record that the petitioner had not established that he had been subjected to battery during the marriage and that he had not established that he had been subjected to extreme cruelty as that term is set out in the statute and regulation. The director found that the petitioner may have been subjected to "marital tensions and incompatibilities," but that the petitioner's testimony and the testimony of declarants on his behalf did not establish his eligibility for Form I-360 relief.

In the petitioner's personal statements, he credibly related instances of battery as well as instances of extreme cruelty perpetrated against him by J-S-. His statements are internally consistent and credible and the affidavits submitted on his behalf contain probative details of instances of extreme cruelty. Considered in the aggregate, the petitioner's testimony provides sufficient evidence that he was subjected to battery perpetrated by his USC spouse. The petitioner's testimony and the testimony submitted on his behalf is sufficient to establish that his spouse's actions constituted battery and extreme cruelty during the marriage as those terms are defined in the statute, regulation, and case law.

Conclusion

As the issue of abuse was the only issue to be resolved to establish eligibility for this benefit and as the record is sufficient to establish that the petitioner was subjected to battery and extreme cruelty perpetrated by his USC spouse, the petition is approvable. The applicant has met his burden of proof.

ORDER: The September 12, 2011 decision of the director is withdrawn. The appeal is sustained and the petition is approved.