



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



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EAC 99 183 52922

Office: Vermont Service Center

Date: SEP 13 2000

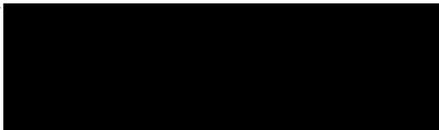
IN RE: Petitioner:  
Beneficiary:



Public Copy

APPLICATION: 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)

IN BEHALF OF PETITIONER:



Identifying data removed to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Honduras who is 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 the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he: (1) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; and (2) is a person whose deportation (removal) would result in extreme hardship to himself, or to his child. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner more than adequately presented that he was the victim of extreme cruelty perpetrated by his spouse. He claims that the petition was denied because the petitioner is a man, not a woman, and to affirm the Service's decision would be a violation of the Equal Protection Clause of the Fourteenth Amendment. Counsel further asserts that the petitioner has resided in the United States for over six years, he has few family members in Honduras, and many parts of Honduras are not fit for habitation.

It should be initially noted that the Immigration and Naturalization Service (the Service) cannot pass upon constitutionality of the statute it administers. Counsel's contention that the Service denied the petition because the petitioner is a man, not a woman, is without merit. Counsel has presented no documentary evidence to establish that the Service denied the petition based on gender. Since all applicants seeking special immigrant status under the battered spouse provisions of the Act must qualify on the same basis, as mandated by Congress, no violation of equal protection can be found.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner entered the United States without inspection on February 7, 1994. The petitioner married his United States citizen spouse on March 8, 1996 at Bronx, New York. On May 24, 1999, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

[T]he 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

(i) 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.

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(iv) 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 abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director, in his decision, discussed the evidence furnished by the petitioner, including affidavits from his two friends, to establish extreme cruelty. That discussion will not be repeated here. Because the petitioner furnished insufficient evidence to establish that he has met this requirement, he was requested on January 10, 2000 to submit additional evidence. The director listed evidence he may submit to establish extreme cruelty. He noted that in response, the petitioner furnished copies of the

evidence originally furnished with his petition and discussed in his decision. Because the record did not contain satisfactory evidence to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen or lawful permanent resident during the marriage, or that he is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen or lawful permanent resident during the marriage, the director denied the petition.

On appeal, counsel asserts that the petitioner has presented multitude of evidence indicating that he was the victim of extreme cruelty perpetrated by his citizen spouse. He submits articles on domestic violence and states that emotional and verbal abuse can leave the deepest scars. Counsel further asserts that the director's claim that the petitioner did not prove he has been stalked or harassed is ludicrous due to the fact that stalking is not provable absent testimony.

To establish that he was the victim of extreme cruelty, the record reflects that the petitioner furnished his own statement, statements from two friends, and a statement from his spouse which appears to be addressed to the Assistant District Attorney requesting that her complaint against her husband be dropped. These statements were evaluated and addressed by the director in his decision and found to be insufficient to establish extreme cruelty. Furthermore, despite counsel's statement that the director's claim that the petitioner did not prove he has been stalked or harassed is ludicrous, the petitioner on appeal has furnished no additional evidence to establish the claimed harassment and stalking and as required in 8 C.F.R. 204.2(c)(2). The evidence of record failed to establish that the claimed abuse perpetrated on the petitioner by his spouse was "extreme." The petitioner has failed to establish that he was battered by or was the subject of "extreme cruelty" as contemplated by Congress and as defined in 8 C.F.R. 204.2(c)(1)(vi).

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that his removal would result in extreme hardship to himself or to his child. 8 C.F.R. 204.2(c)(1)(viii) provides:

The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or

reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here. He noted, however, that although the petitioner claims he does not have a home to return to in Honduras because of the hurricane, and that in the United States there is no embarrassment with the idea of a man being the victim of domestic violence, the conditions in Honduras are temporary and the petitioner had not establish that he had been a victim of domestic violence.

On appeal, counsel asserts that the petitioner has resided in the United States for over six years, he has few family members in Honduras, and many parts of Honduras are not fit for habitation. He submits a copy of 1998 photos of flooding of bridges and remote areas in Honduras.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). Moreover, the loss of current employment, the resulting financial loss, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

The 1998 photos of the flooding in Honduras, and as noted by the director in his decision, the conditions in Honduras are temporary. Therefore, it is not unreasonable to assume that his home country of Honduras has since returned to normal. The petitioner, however, has not established that his removal from the United States would result in extreme hardship based on economic, political, or social problems in his country. Nor is there evidence in the record to establish that the petitioner would be unable to find employment, or that he would be unable to pursue his occupation or comparable employment upon his return to his home country. The fact that economic opportunities for the petitioner are better in the United States than in the alien's homeland does not establish extreme hardship. Matter of Ige.

Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int.



Dec. 3298 (BIA 1996). The record reflects that the petitioner's family reside in Honduras. Thus, in the petitioner's case, removal from the United States would result not in the severance of family ties but rather in the reunification of his family.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.