



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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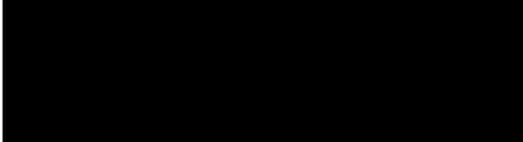
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Office: Vermont Service Center

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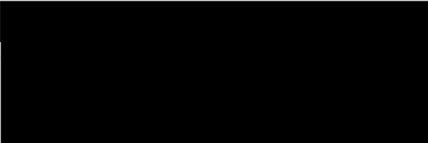
SEP 13 2000

IN RE: Petitioner:
Beneficiary:



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:



Public Copy

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.

Identifying data should be
prevent clearly unwarranted
invasion of personal privacy

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 Colombia 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 she: (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 herself, or to her child. The director, therefore, denied the petition.

On appeal, counsel asserts that the director's decision misstates the evidence in that the petitioner never claimed to have been battered in July of 1999; she was injured by her husband in April of 1999. She states that July 1999 was the date she left her husband. She further states that the petitioner was subjected to extreme cruelty and she contacted the police well before the petition was filed. Counsel further asserts that the petitioner will suffer hardship if she returns to Colombia because most of her family are here, the country conditions in Colombia are very dangerous, and unemployment rate is nearly 20 per cent. Subsequent to the appeal, counsel submits a copy of an order of protection issued on July 11, 2000.

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 record reflects that the petitioner entered the United States as a visitor on January 21, 1996. The petitioner married her United States citizen spouse on March 13, 1997 at Queens County, New York. On November 18, 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, her U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she 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, reviewed and discussed the evidence furnished by the petitioner. The discussion will not be repeated here. The director, however, noted that although the petitioner and her spouse separated in July 1999 apparently following an incident, she did not report such incident with the police, nor did she apply for a temporary, ex-parte protection until approximately four months later, in November 1999. He further noted that although the incident was supposed to have occurred in July 1999, the photographs furnished were taken on April 30, 1999, more than two months before the incident, and that the person or persons on the photographs were unidentifiable.

On appeal, counsel asserts that the petitioner was injured by her husband in April of 1999. However, as noted by the director, the record reflects that only until 17 days before the self-petition is filed on November 18, 1999, did the petitioner report to the police that she was abused by her spouse. The police report reflects that on November 1, 1999, the petitioner reported that "her husband grabbed her arms, slammed her into wall causing bruises to arms. He is a heavy drinker who threatens to harm her if she doesn't come back home or if she calls police. She has pictures from incident. She says he won't let her get her mail. She is seeking an OOP." On November 5, 1999, four days after the petitioner filed a complaint with the police, an ex-parte temporary order of protection was filed with the court. The petition for order of protection reflects that the petitioner claimed to have been verbally abused by her spouse on October 29, 1999.

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). Further, the alleged abuse described are based solely upon testimony offered by the petitioner. Nor did the affiants establish that they are eye-witnesses to the abuse and knew sufficient details regarding any incidents of abuse or extreme cruelty. While the petitioner furnished photos of a person who had suffered an abrasion or abrasions, as noted by the director, the person on the photos are unidentifiable.

As provided in 8 C.F.R. 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." The evidence in the record fails to establish that the claimed abuse perpetrated toward the petitioner by her spouse was "extreme." The petitioner has failed to establish that she 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 her removal would result in extreme hardship to herself or to her 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.

Because the petitioner furnished no evidence to establish that her removal to Colombia would be an extreme hardship, the petitioner was requested on December 22, 1999 to submit additional evidence. The director listed examples of factors to be considered in determining whether her removal from the United States would result in extreme hardship. In response, the petitioner furnished one piece of evidence. This evidence was reviewed and discussed by the director in his decision. The discussion, however, will not be repeated here.

On appeal, counsel asserts that the petitioner will suffer hardship if she returns to Colombia because most of her family are here, the country conditions in Colombia are very dangerous, and unemployment rate is nearly 20 per cent.

The loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, cultural readjustment, or the fact that economic and educational opportunities are better in the United States than in the alien's homeland 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).

No documentary evidence has been furnished to establish that the petitioner's removal from the United States would result in extreme hardship based on economic, political, and social problems in her country, that she would be unable to find employment, or would be unable to pursue her occupation or comparable employment upon her return to her country. While counsel claims that the country conditions in Colombia are very dangerous, no documentary evidence is furnished to corroborate her claim, nor has she established any specific relationship between the petitioner's return to Colombia and the manner in which these conditions would affect her, and whether living in a country where violence exists will subject her to such violence.

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). 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 her family. Further, the petitioner has not established that she is not able to receive support from family members residing in Colombia.

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, or to her child.

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.