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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

B9

[redacted]

AUG 26 2003

FILE: [redacted] Office: Vermont Service Center Date:
EAC 02 151 52454

IN RE: Petitioner:
Beneficiary: [redacted]

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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Peru 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 resided in the United States with the citizen or lawful permanent resident spouse; (2) 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 (3) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, the petitioner asserts that the Service erred in denying the petition, and also failed to realize that he had proven his burden of extreme mental and physical cruelty. He submits additional evidence.

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,

 [redacted]

> 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 without inspection on December 7, 1993. The petitioner married his United States citizen spouse on March 5, 1997 at Tuckahoe, New York. On April 1, 2002, 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.

PART I

8 C.F.R. § 204.2(c)(1)(i)(D) requires the petitioner to establish that he has resided in the United States with his U.S. citizen spouse. Additionally, 8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that he entered into the marriage to the citizen in good faith.

The director reviewed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on September 13, 2002. He noted that the affidavits from [redacted] and [redacted] did not indicate that the petitioner and his spouse resided together, and they do not describe how they gained the knowledge that his was a true marriage. The director further noted that the petitioner had not provided the dates and addresses where he and his spouse resided together.

On appeal, the petitioner submits copies of four photographs, a supplemental statement from, and a supplemental joint statement from and indicating that they have been invited to the petitioner's home to meet his wife, and they saw that they were very happy and in love.

While the and Ms. indicate that they visited the petitioner and his spouse, they did not list the dates and addresses where the petitioner and his spouse resided, and they did not describe how they gained the knowledge that their marriage was a true marriage. Additionally, the statements were not supported by any documentary evidence, nor were the statements notarized and sworn to or affirmed, pursuant to 8 C.F.R. 103.2(b)((2).

Furthermore, the copies of the four photographs did not include any captions or comments. They appear to be wedding photos, but it is not disputed that the petitioner and his spouse were married. The pictures do not establish that the petitioner's intent in marrying was bona fide. Additionally, the petitioner neither furnished nor addressed the director's finding that the petitioner had not provided the dates and addresses where he and his spouse resided together.

The petitioner has failed to establish that he had resided with his citizen spouse and that he entered into the marriage in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(D) and (H).

PART II

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.

* * *

(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.

Because the petitioner furnished no evidence to establish that he had met this requirement, he was requested on September 13, 2002, to submit additional evidence. The director listed in his request the evidence the petitioner may submit to establish extreme cruelty. In response, the petitioner submitted his self-affidavit. This evidence was reviewed and discussed by the director in his decision. That discussion will not be repeated here. The director determined that the record did not contain satisfactory evidence to demonstrate that the petitioner had been the subject of battery, and the petitioner had not provided sufficient evidence to establish that his spouse's behavior would rise to the level of extreme cruelty.

On appeal, the petitioner asserts that he is enclosing his doctor's report. The doctor's report, however, was not included with the appeal. Rather, the petitioner submits a letter from Father Elbin E. Mojica of the Diocese of the Eastern United States, St. Augustine's Church, Elizabeth, New Jersey, indicating that the petitioner has come to them for counseling about his marriage, that they understand his wife is [redacted] and that the petitioner "had such a down because his wife would act on her own and live her own social life." Father Mojica reiterated the petitioner's claim in his November 11, 2002 self-affidavit that was reviewed and discussed by the director in his decision.

The statement by Father Mojica, however, was not supported by any documentary evidence. Nor did he indicate the date or dates the petitioner appeared for counseling and whether the petitioner availed himself of any further counseling. Further, Father Mojica's letter failed to establish that his conclusion was based on anything other than the petitioner's own account of his marriage, and he did not provide his own observations or professional opinions regarding the existence of extreme cruelty.

The supplemental statement from [redacted] indicates that she "one day decided to visit them so when I was going to ring the bell I hear from the inside someone screaming it was [redacted] wife that was telling him a lot of cursive words." The supplemental joint statement from [redacted] and [redacted] indicates, "One day I saw that she used to humiliate him and scream at him a lot in a reunion. I saw her dancing a lot and he was just sitting

down in a chair looking sort of sad. Later we came to find out that she left him."

The statements, without corroborating evidence of the abuse, do not establish that the petitioner was an abused spouse. Further, none of the statements from the affiants describe the incidents leading to the abuse, or indicated that they knew sufficient details regarding any incidents of abuse or extreme cruelty. The relationship described in the statements reflects what would be considered a troubled or deteriorating marital relationship but does not constitute qualifying abuse. Infidelity or unfaithfulness to a moral obligation, and abandonment are not included in, nor do they meet, the definition of qualifying abuse. The record indicates that the citizen spouse abandoned the marital relationship. "Abandonment" is not included in, nor does it meet, the definition of qualifying abuse.

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." None of the affiants found that the claimed abuse perpetrated toward 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 to overcome the director's findings, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E).

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.