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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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: JUL 11 2003
EAC 01 173 53868

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 Egypt 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, under Service regulations currently in effect, the petitioner has not, at this time, established that he: (1) is the spouse of a citizen or lawful permanent resident of the United States; or (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i) or § 1153(a)(2)(A), based on that relationship. The director further 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; or (2) is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel 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, 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 August 22, 1986. The petitioner married his United States citizen spouse on November 11, 1999 in Reno, Nevada. On April 27, 2001, 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)(F) requires the petitioner to establish that he is a person of good moral character. Pursuant to 8 C.F.R. § 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

The director noted that the petitioner was instructed on June 7, 2001, to submit police clearances from every locality where he had resided for six months or more during the three years prior to the filing of the self-petition. The petitioner, however, failed to submit police clearances from April 1998 to June 1999, the date he claimed to have moved to California. The director, therefore, determined that the record did not contain satisfactory evidence to demonstrate the petitioner's qualification under this requirement.

On appeal, the applicant claims that from 1998 to 1999, he lived in Garfield, New Jersey, and that the Garfield Police Department advised him that he had to request the clearance in person. He

apologizes that he was not able to do so because he cannot afford to travel to New Jersey. He submits a letter of clearance from the Hackensack Police Department; however, he failed to submit a letter of clearance from the Garfield Police Department. While the petitioner claims that he would have to travel to New Jersey to personally apply for a letter of clearance from the Garfield Police Department, no evidence was furnished by the Garfield Police Department to support this claim.

The petitioner has failed to overcome this finding of the director, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F).

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 reach 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.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on June 7, 2001. That discussion will not be repeated here. The director noted that it appeared the petitioner's relationship was hindered by misunderstandings, his spouse's illness, meddling by his spouse's family, and possible domestic violence committed by the self-petitioner. The director concluded that none of the evidence submitted established that any of the conflicts met the criteria for battery or extreme mental cruelty.

On appeal, the petitioner states that in response to the Service's request of June 7, 2001, he submitted an 18-page statement explaining in detail most of what he remembered [redacted] (his spouse) doing. His spouse's actions, according to Dr. [redacted] a clinical psychologist, qualify as mental cruelty, not battery. The petitioner further states that [redacted] never hit him, was very nice off and on, but used to do things that made his life and the life of their child miserable and a living hell, whether intentionally or unintentionally. He requests that his 18-page letter be read one more time. It is noted that in his decision the director reviewed and addressed the petitioner's 18-page letter in detail and concluded that it was insufficient to establish that the petitioner has been the subject of extreme cruelty. The AAO has also read all information submitted by the petitioner and finds no reason to further elaborate on the director's decision.

In a self-statement furnished on appeal, the petitioner made additional comments and explanations regarding the director's

findings. The self-statement, however, is a recount of previous statements addressed by the director in his decision, and provides no new evidence to support the petitioner's claim of being battered.

The petitioner submits another letter from Dr. [redacted] in which he states that the petitioner's emotional reaction and subsequent irritable mood were precipitated by the abuse in his marital relationship, and that led to a separation and subsequent marital termination. Dr [redacted] however, furnished no evidence to establish that the petitioner was, in fact, abused by his citizen spouse. While the Bureau respects the opinion of professionals such as Dr. [redacted] the record does not contain sufficient evidence to support his statements regarding the petitioner and to demonstrate that the petitioner has suffered extreme cruelty as described in the Violence Against Women Act (VAWA).

The petitioner asserts that his spouse falsely accused him of abuse and applied for a restraining order claiming that the petitioner threatened to kill her family. The order further requested that the petitioner not see his child except under supervision because he may try to abduct the child. The petitioner claims that the judge cleared him of all accusations. He submits a copy of the court decision regarding restraining orders, custody, and visitation, dated September 4, 2001. The court states, in part: "Petitioner/wife's motion for restraining orders is denied. The court finds that her application for said orders (personal conduct restraint and "stay away" orders) is not supported by a preponderance of the evidence. Her application is therefore denied for lack of proof."

While the petitioner claims that the court cleared him of all accusations made by his spouse, the court did not specifically address this claim made by the petitioner. The decision of the court indicates only that the application for restraining orders was not supported by a preponderance of the evidence. The record of proceeding contains a copy of a judgment of dissolution of marriage between [redacted] and the petitioner effective June 27, 2002, a restraining order signed by the court on May 9, 2002, and an order of the court giving Fahima the sole legal and physical custody of their minor child. The judgment further orders that all visitation by the petitioner shall be professionally supervised.

The relationship described by the petitioner reflects a troubled marital relationship, but does not constitute qualifying abuse. The record also 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).

As provided in 8 C.F.R. 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to reach the level of "battery or

extreme cruelty." The evidence furnished by the petitioner is insufficient to establish that the claimed abuse perpetrated 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).

PART III

8 C.F.R. § 204.2(c)(1)(i)(A) provides that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States. 8 C.F.R. § 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that he is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. 8 C.F.R. 204.2(c)(1)(ii) provides that the self-petitioner must be legally married to the abuser when the petition is properly filed with the Service. 8 C.F.R. 204.2(c)(2)(ii) provides that a self-petition must be accompanied by evidence of the relationship. Primary evidence of the marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages of both the self-petitioner and the alleged abuser.

The director determined that the petitioner failed to establish that Ms. [redacted] (petitioner's spouse) prior marriage was legally terminated, and that she was legally free to marry the petitioner. The director advised the petitioner that, according to the Department of State's Foreign Affairs Manual (FAM), a certificate of marriage between Muslims is usually issued by the religious body of the priest who performs the ceremony. He added that in India, religious Muslim marriages are legally valid, and the FAM accepts the validity of such marriages. Therefore, it must be established that Ms. [redacted] prior marriage was legally terminated, which could be established by the submission of a certificate from the proper Muslim or civil authorities.

On appeal, the petitioner submits a letter from the Islamic Center of Contra Costa, Concord, California, certifying that:

> [A]ccording to Fetwa (Proclamation) of [redacted] and [redacted] the Two Islamic Schools of Thought: "If the husband of a woman is lost, and there is no news about him, the woman has to wait for a period of four years, four months and ten days. After that period she can marry another man.

The petitioner, on appeal, states that although Ms. [redacted] was not in possession of a divorce certificate, she was free to marry him as she had been separated from her husband since 1992. The letter from the Islamic Center of Contra Costa, however, is not sufficient evidence that this particular situation pertains to Ms. [redacted]

Nor is this letter a certificate of divorce between Ms [redacted] and her former spouse.

A prior marriage not legally terminated is a bar to consideration of the marriage upon which the visa petition is based. *See Matter of Brantigan,* 11 I&N Dec. 493 (BIA 1966).

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act and allows an abused individual in a bigamous relationship to self-petition if he or she is the spouse of a citizen of the United States, and believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States, if the alien demonstrates that (a) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien, and (b) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse. *Id.* section 1503(b), 114 Stat. at 1520-21.

The record in this case contains the petitioner's marriage certificate and documentation establishing the existence of a good-faith marriage. The petitioner, however, has not established that he has been battered by, or has been the subject of extreme cruelty perpetrated by his citizen spouse, as required by section 1503(b) of VAWA.

Accordingly, the petitioner has failed to overcome the director's findings, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(A) and (B).

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.