U.S. Department of Homeland Security

Citizenship and Immigration Services

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

B9

[redacted]

PUBLIC COPY

FILE: [redacted] Office: Vermont Service Center Date: FEB 2 0 2004

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Citizenship and Immigration Services (CIS) 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.

Cindy M. Somers for
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 Indonesia 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 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 director, therefore, denied the petition.

On appeal, counsel asserts that the documentation submitted clearly demonstrated that the self-petitioner was a victim of extreme cruelty perpetrated by his U.S. citizen spouse, because the psychologist's report contained a diagnosis of psychological problems. Counsel states that the behavior by the petitioner's spouse, whether or not it is the sole source of the petitioner's medical conditions, did aggravate the petitioner's medical problems and does constitute "extreme cruelty." Counsel asserts that as a result of the stress and inhuman treatment, the petitioner continued to suffer great pain and numbness in his body, and the petitioner was tormented mentally and emotionally by his spouse. She asserts that it is, therefore, irrelevant whether the petitioner's medical condition was initially "congenital in nature" as mentioned in the medical reports, because the critical issue was whether the behavior of his wife caused aggravation of his medical condition. Counsel states that the petitioner made a good-faith attempt to seek clarification from his previous doctor but could not obtain such a letter because his medical insurance was discontinued after his wife cancelled his insurance. Counsel submits documentation previously furnished and addressed by the director.

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 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 July 31, 1992. The petitioner married his United States citizen spouse on June 2, 1997 at Las Vegas, Nevada. On June 14, 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.

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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> * * *
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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 reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on December 13, 2002. That discussion will not be repeated here. The director noted, however, that while the Service (now CIS) acknowledges that a failed marriage can cause distress that may be a contributing factor in other medical issues, it does not constitute extreme mental cruelty as envisioned by Congress. He further noted that the evaluation furnished cited the petitioner's medical issues as a contributing factor to his depression, and that the evaluation states that the break-up of the petitioner's marriage and his wife's announcement that she was a lesbian caused discord that contributed to his medical problems and resulted in his depression. The director reiterated that this did not constitute extreme mental cruelty as envisioned by Congress, and denied the petition accordingly.

The petitioner claimed that according to his physician, his medical problem (spinal cord contusion and spinal stenosis) was contributed by stress and depression. There is no evidence in the medical record, however, to establish that stress and depression were in fact the contributing factor of spinal cord contusion and spinal stenosis. In fact, the medical record reflects that the petitioner was advised by three different physicians that surgery was needed to correct the medical condition. There is no evidence in the record that a surgery had since been performed.

Despite counsel's arguments, the documents furnished on appeal were previously evaluated and discussed by the director in his decision. No additional documentation, however, was furnished by the petitioner to overcome the director's findings that he had been the subject of "extreme cruelty."

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 furnished is

insufficient to establish 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.