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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]
EAC 02 220 52992

Office: VERMONT SERVICE CENTER

Date:

JUN 18 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: 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)

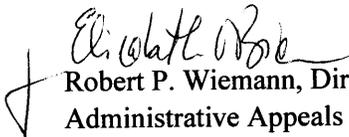
ON BEHALF OF PETITIONER:

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

PHOTOCOPY

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 the Dominican Republic 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 is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The director denied the petition, finding that the petitioner failed to establish that she has resided with the U.S. citizen spouse; has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse; and, entered into the marriage to the citizen in good faith.

On appeal, the petitioner submits additional evidence in the form of jointly filed federal income tax returns. She asserts that the severe stroke she suffered was due in part to the stress caused by her marital relationship.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) 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.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

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; [and]

* * *

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

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

Abuse. 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 abused 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 abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

Battery or extreme cruelty. For the purpose of this chapter, the 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 . . . 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 . . . and must have taken place during the self-petitioner's marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

On the Form I-360, the petitioner indicated that she entered the United States on May 25, 1991. According to the evidence on the record, the petitioner wed a United States citizen on May 25, 1994 in Bronx, New York. The petitioner's spouse filed a Form I-130 petition on behalf of the petitioner. Action was terminated on the Form I-130 petition due to lack of prosecution. On June 13, 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, her U.S. citizen spouse during their marriage.

The regulation at 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).

The regulation at 8 C.F.R. § 204.2(c)(i) requires the petitioner to show that she has resided with her citizen spouse and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she has resided with her citizen spouse, entered into the marriage in good faith, and has been battered by or has been the subject of extreme cruelty by her citizen spouse during the marriage, the director requested her on December 7, 2002 to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, that she had resided with her spouse, and that she married her spouse in good faith.

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.

On appeal, the petitioner stated the reason for the appeal as follows:

When filing My I-360 petition, I stated the mental and physical conditions I have been facing for more than six years, evidenced by medical reports. As part of those problems it was almost impossible for me to keep papers or records to establish that me and my spouse shared a common residence. The most I have been able to find are tax returns for the years 1995, 1996 and 1997, copies of which I herein enclosing. Although my husband did not perpetrated physical abuses, it is my believe that you apply severe standards to define as no eligible the mental abuses my husband caused. Please take into account that I have not carried a normal life, and the severe stroke I suffered was due in part to the stresses of my marital relationship. . . . If the need arises, I may provide additional medical reports and affidavits of witnesses in support of my appeal. [sic.]

In her statement, the petitioner said that she suffered a severe stroke due to the tense situation she faced within her marriage. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner submitted extensive medical documentation indicating that she has been treated for a seizure disorder and depression. The evidence does not show a link between the petitioner's health and the treatment she received from her husband. In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse.

It is noted that the petitioner failed to file a complaint with the police against her spouse. She failed to submit reports and affidavits from court officials, counselors, or social workers. The petitioner failed to submit evidence that she sought psychological or medical treatment for any abuse she endured. She did not obtain an order of protection against her spouse or take other legal steps to end the abuse. Her statements are insufficiently specific as to the exact harm she suffered from her spouse.

The director determined, and the AAO concurs, that the petitioner failed to establish that she entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner married her husband in good faith. The petitioner provided CIS with her own statement, two wedding photographs and three jointly filed federal income tax forms. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

The record contains scant evidence to demonstrate that the petitioner resided with her citizen spouse. The evidence consists of the petitioner's statements and an apartment registration in which no tenants are named. The evidence is insufficient to establish that the petitioner has resided with her citizen spouse.

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.