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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

[REDACTED]
EAC 01 195 51136

Office: VERMONT SERVICE CENTER

Date: MAY 24 2004

IN RE:

Petitioner:
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:

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director [REDACTED] and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the [REDACTED] 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 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 three affidavits including her own.

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 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:

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.

The petitioner indicated on her initial [redacted] she last entered the [redacted] without inspection. According to the evidence on the record, the petitioner Quiles of [redacted] The petitioner's spouse [redacted] petition on behalf of the petitioner. [redacted] petition was denied because the director determined that the petitioner had failed to establish that he and his wife had a bona fide marital relationship.

██████████ the petitioner filed a self-petition 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 director denied the petition on ██████████. The petitioner timely appealed the director's ██████████. Subsequent to filing the appeal, the petitioner filed a second self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by her United States citizen spouse (EAC03 167 53209). That petition is not the subject of this appeal and remains pending.

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).

Because the petitioner furnished insufficient evidence to establish that she had been battered by or subjected to extreme cruelty by her citizen spouse, she was requested ██████████ submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, and that she married her spouse in good faith. The petitioner responded to the request.

In a notice of intent to deny dated ██████████ the director gave the petitioner 60 days to submit evidence to overcome the director's reasons for denying the petition.

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 submitted her own statement and two affidavits of friends.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States citizen spouse. The evidence consists of the following:

- The petitioner's statements.
- The statements of friends of the petitioner.
- The statement of the petitioner's sister.
- An undated letter written by a social worker at the ██████████ in ██████████ verifying that the petitioner was receiving therapy at the clinic.
- A letter dated ██████████ stating that the petitioner was under the care of ██████████ Choe for depression at the ██████████
- In her statements, the petitioner indicated that her husband had "cheated" on her and had been verbally abusive towards her.
- Photographs of the petitioner's spouse with another man.

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 police, court officials, counselors, or social workers. The petitioner failed to submit evidence that she sought refuge in a shelter or elsewhere. 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. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings.

The director determined that the petitioner failed to establish that she had entered into the marriage in good faith, as required by the regulation at 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 had married her husband in good faith. The petitioner provided statements, a statement from her sister and several statements of friends. The petitioner submitted copies of her marriage certificate, two jointly filed income tax returns and one joint bank account. The petitioner provided a lease signed by herself and her spouse for a tenancy beginning and ending . According to the Biographical Data Sheet submitted by the petitioner of she had lived at an address other than the one listed on the lease in those years.¹ It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. The evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith. It is noted that the petitioner appealed the district director's denial of the petition to the Board of Immigration Appeals (BIA). The BIA determined that the had not proved the bona fides of his marriage to the self-petitioner in this case.

The burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ 67 E. 175th Street, Apt B1, Bronx, NY since September 1995.