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**U.S. Citizenship  
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FILE: [REDACTED]  
EAC 04 151 52623

Office: VERMONT SERVICE CENTER

Date: NOV 16 2005

IN RE: Petitioner: [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:



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.

*Mari Johnson*

S Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center Director denied the preference visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Philippines 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 denied the petition, finding that the petitioner failed to establish that he had been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse.

On appeal, counsel for the petitioner submits a brief.

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)(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.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on September 8, 2003 in King County, Washington. The petitioner’s spouse filed a Form I-130 petition on the petitioner’s behalf on October 16, 2003. The petitioner filed a Form I-485 concurrently with the Form I-130. The district director denied both the Form I-130 and Form I-485 on July 6, 2004 due to abandonment. On April 22, 2004, 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, his U.S. citizen spouse during their marriage.

At issue in this proceeding is whether the petitioner established that he has been battered by or has been the subject of extreme cruelty perpetrated by his citizen spouse. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he 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 he had been battered by, or the subject of extreme cruelty perpetrated by his U.S. citizen spouse, the director requested that he submit additional evidence on April 30, 2004. The petitioner requested an additional 60 days to respond to the request for additional evidence. The director granted the request for an extension. The petitioner responded to the request. Finding the evidence insufficient to establish that the petitioner had resided with his wife, had been abused or subjected to

extreme cruelty perpetrated by the spouse, entered into the marriage in good faith and is a person of good moral character, the director issued another request for additional evidence on December 3, 2004.

The director determined that the petitioner had established that he had resided with his spouse, entered into the marriage in good faith, and is a person of good moral character. The director found the evidence insufficient to establish that the petitioner had been abused or the subject of extreme cruelty perpetrated by his spouse.

On appeal, counsel for the petitioner submits a brief, asserting that the evidence is sufficient to establish that the petitioner was the subject of extreme cruelty perpetrated by his spouse. Counsel states that the petitioner's spouse lied to the petitioner about her mental illness and that she caused the petitioner mental anguish. Counsel further states that the petitioner's spouse subjected the petitioner to extreme mental cruelty by withdrawing her Form I-130 petition. Counsel's assertions are not persuasive.

The evidence relating to abuse is as follows:

- The petitioner's statement dated April 18, 2004, asserting that his wife "mentally and verbally abused" him by threatening to divorce if he did not follow her wishes. He further complained that when his wife had mood swings, she would kick him out of their bedroom. He said that she "tortures [him] by not allowing [him] to go out with [his] friends." He said his wife took medication for bipolar illness "which caused [him] emotional battery."
- A letter from [REDACTED] indicating that the petitioner and his wife moved into a shared apartment in November 2003 and that the petitioner moved out in January 2004 due to "personal differences."
- A letter from [REDACTED] stating that she introduced the petitioner to his wife and attended their wedding.
- A letter from [REDACTED] indicating he informally counseled the petitioner in regard to marital problems, attended the petitioner's wedding and had the petitioner and his wife over for dinner.
- A letter from [REDACTED] a friend of the petitioner, stating that he delivered a wedding present to the petitioner and his wife at their new apartment.
- An affidavit from Rev. John Madigan, indicating that the petitioner contacted him regarding marital counseling.

The petitioner failed to establish that he was subjected to extreme cruelty by virtue of his wife's bipolar disorder. The petitioner's affidavit was insufficiently specific as to instances of abuse or cruelty. One letter and affidavit submitted to Citizenship and Immigration Services (CIS) refer to marital problems. This evidence is vague, and unpersuasive evidence of abuse. The evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States 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.