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U.S. Citizenship
and Immigration
Services

B9

[Redacted]

FILE: [Redacted]
EAC 04 047 52443

Office: VERMONT SERVICE CENTER

Date: **APR 12 2006**

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:

[Redacted]

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

 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director denied the immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of Ecuador 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 petitioner filed his Form I-360 on December 5, 2003.

The petitioner submitted the following evidence:

- A police clearance from the New York City Police Department.
- A marriage certificate.
- The petitioner's undated statement.
- An affidavit of a friend of the petitioner [REDACTED]
- Phone bills addressed to the petitioner in care of his wife.
- Copies of photographs of the petitioner and his wife.
- An envelope addressed to both the petitioner and his wife.
- Copies of term life insurance policies.
- Copies of electric bills addressed to both the petitioner and his wife.

It is noted that the electric bills are dated as early as October 22, 1997 and as late as May 23, 2003. On the Form I-360 petition, the petitioner indicated that he resided with his wife from February 11, 1997 until December 2002.

The envelope addressed to both the petitioner and his wife is not postmarked or otherwise dated.

The phone bills are addressed to the petitioner alone.

Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, on August 26, 2004, the director issued a notice requesting the petitioner to submit evidence (RFE) that his spouse subjected him to battery or extreme cruelty, and that he entered into their marriage in good faith. The petitioner, through counsel, responded to the notice and submitted additional evidence on October 21, 2004.

On August 15, 2005, the director denied the petition because the record failed to establish that the petitioner has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse, and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits a statement and resubmits evidence.

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 February 11, 1997 in New York State. The petitioner’s wife filed a Form I-130 on the petitioner’s behalf. The petitioner filed a Form I-485 concurrently with the Form I-130.

The first issue to be addressed 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 has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that he has been abused by, or the subject of extreme cruelty perpetrated by his citizen spouse, the director asked him to submit additional evidence on August 26, 2004. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty. The petitioner responded to the request.

On appeal, counsel for the petitioner asserts that “[t]he weight of the evidence [they] submitted on behalf of [the petitioner is] enough at this time in support of [his] claim.”

The evidence relating to abuse consists of the following:

The petitioner’s statement in which he asserted that he and his wife argued and that she had an extramarital affair. He said that she threatened to call Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS); pushed, hit, and abandoned him. He said that his wife took their savings.

The petitioner submitted an affidavit written by a friend [REDACTED] which states that the petitioner told him that his wife was hitting, abusing and humiliating him. The affiant stated that he told the

petitioner to go to the police but he declined, saying “it would be ridiculous for him if he had to report that a woman was abusing him.” The affiant does not have first-hand knowledge of how the petitioner’s wife treated the petitioner. The allegations of both the petitioner and his friend are insufficiently specific to be given evidentiary weight. The evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse. Accordingly, the petitioner has not established that he has been battered by, or subjected to extreme cruelty by, his U.S. citizen spouse. He is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, and his self-petition must be denied.

The next issue to be addressed in this proceeding is whether the petitioner established that he had 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 had married his wife in good faith. The petitioner provided CIS with his own statement, and that of a friend. The petitioner’s friend stated that he thought that the petitioner and his wife were “a nice couple.” He failed to provide details about first-hand knowledge of the petitioner’s courtship and marriage. The petitioner described in detail one date he had with his then prospective wife, but he failed to provide sufficient details about his life with his spouse and their courtship.

He also submitted copies of phone bills addressed to the petitioner alone in care of his wife. On appeal, counsel for the petitioner asserts that the phone company uses the symbol “%” to mean “and/or.” Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted copies of electric bills addressed to the petitioner and his wife. The bills are dated October and November 1997, January 2001, April and December 2002, January, February, March, April, and May 2003. On the Form I-360, the petitioner stated that he lived with his wife from February 1997 through December 2002. The bills dated 2003 are of no evidentiary value.

The petitioner submitted copies of photographs of the petitioner and his wife sitting together, laying in bed together, playing music and cleaning the toilet together. The photographs are not evidence of the petitioner’s intent to enter into a bona fide marriage.

The petitioner submitted copies of life insurance policies naming the petitioner’s wife as the beneficiary on his policy and the petitioner as beneficiary on his wife’s policy.

It is noted that the petitioner failed to submit evidence such as a rental agreement, or mortgage. He failed to submit evidence that he and his wife filed joint income tax returns or shared bank accounts. No children were born of the marriage.

The evidence on the record is insufficient to establish that the petitioner married his citizen spouse in good faith.

We concur with the director's determination that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his former spouse during their marriage or that he entered into the marriage in good faith. Counsel's claims and the evidence submitted do not overcome this basis for denial and the petition may not be approved. However, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID).

The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

In this case, the director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of an NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of his/her case.

On remand, the director should also evaluate whether the petitioner established that he was married to a United States citizen and had a qualifying relationship at the time of the filing of the petition. The petitioner filed his Form I-360 on December 5, 2003 and indicated on the petition that he was married. The petitioner previously notified CIS on July 10, 2003 that he would not attend an I-485 interview because he was divorced.

The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the petitioner and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with this decision.