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U.S. Citizenship  
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FILE:

EAC 05 085 52411

Office: VERMONT SERVICE CENTER

Date:

AUG 14 2006

IN RE:

Petitioner:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that his U.S. citizen wife battered or subjected him to extreme cruelty.

The petitioner timely appealed.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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

*(vi) 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, 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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* 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.

\* \* \*

(iv) *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 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 abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The petitioner in this case is a native and citizen of Vietnam who entered the United States on April 16, 2004 as a nonimmigrant fiancé (K-1). On June 18, 2004, the petitioner married [REDACTED], a U.S. citizen, in Portland, Oregon. On February 2, 2005, the petitioner filed this Form I-360. On July 6, 2005, the director requested additional evidence of, *inter alia*, [REDACTED] battery or extreme cruelty. The petitioner requested and was granted additional time to respond and submitted further evidence on October 31, 2005. On December 19, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty.

On appeal, the petitioner claims that [REDACTED] and her family mentally and physically maltreated him and he submits a copy of the prenuptial agreement prepared by [REDACTED] that he refused to sign. We concur with the director's conclusion and find that the petitioner's claims and the evidence submitted on appeal do not overcome the ground for denial. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

#### *Battery or Extreme Cruelty*

As evidence of battery and extreme cruelty, the petitioner initially submitted his own affidavit, his aunt's affidavit, a police report and a letter from his counselor. In his October 11, 2004 affidavit, the petitioner states that he and [REDACTED] family argued over the former couple's prenuptial agreement because the petitioner did not want to give [REDACTED] his savings for their baby. The petitioner reports that [REDACTED] brother threatened to kill him, choked him and kicked him out of their house. The petitioner further states that on July 22, 2004, [REDACTED] threw a metal napkin holder at his head, but he dodged and the holder hit the kitchen cabinet. The petitioner reports that [REDACTED] then tried to slap him, but he avoided being struck and [REDACTED] then told him she would file for divorce and left their home. The petitioner called the police. On July 26, 2004, the petitioner states that Ms. [REDACTED] took her name off of their apartment lease and utilities.

██████████ the petitioner's aunt, states that ██████████ and her family were only interested in the petitioner's money. She states that on several occasions ██████████ brother threatened to kill the petitioner and he had to leave for his safety and that ██████████ once threw objects at the petitioner and attempted to slap him in the face. ██████████ states that the petitioner is extremely distraught and emotionally drained from his relationship with ██████████ does not, however, indicate that she personally observed ██████████ maltreatment of the petitioner and she does not explain how she otherwise came to know of ██████████ alleged abuse.

The police report for the July 22, 2004 incident recounts the petitioner's description of events, but also states that ██████████ denied trying to hit the petitioner and said that she was angry at the petitioner's "verbal abuse" and knocked the napkin holder off of the table while she was holding their baby. The police report states that ██████████ explained that she and the petitioner were arguing because she refused to take antibiotics that the petitioner had his parents send from Vietnam because he said he got sick from kissing her.

██████████ the petitioner's counselor, describes the petitioner's relationship with ██████████ and then states, "It is my professional opinion [that the petitioner] has experienced and suffered cruel and unusual treatment, both mentally and physically, at the hands of his wife." ██████████ provides no explanation of how he came to this conclusion and does not state the date or length of his counseling session or sessions with the petitioner.

In response to the director's request for further evidence, the petitioner submitted a second, undated statement in which he explains that religious differences between himself and ██████████ family caused tension in the household; that he was dependent on ██████████ and her family because he did not speak English; that he had to pay all their food expenses and that if he did not pay, he "would be left hungry;" that ██████████ threatened that if he did not sign the prenuptial agreement, she would not sponsor him and he would have to go back to Vietnam; and that ██████████ once introduced him to her friends and relatives as a visitor, rather than her fiancé. The petitioner states that ██████████ constantly humiliated him, said she made a mistake when she married him and told him that in the United States, "Lady is first, children and old people are second, animals, dogs and cats are third, the men are last after dog and cat [sic]." The petitioner reports that he cared for their infant son all day and night and paid for all of their expenses with his savings, but that when he asked for a drink of water at night, ██████████ insulted him by giving him tap water when she and her family drank bottled water and shouted at him for not tidying the house when she came home from work. The petitioner reports that after the July 22, 2004 incident, he had to move to a cheap rental, which was much worse than the apartment he and ██████████ had lived in.

On appeal, the petitioner repeats his claims regarding ██████████ alleged abuse. The petitioner submits a copy of the prenuptial agreement that ██████████ asked him to sign. Yet the petitioner did not sign this agreement and the agreement he did sign, submitted below, does not appear to compromise his interests.

The present record does not demonstrate that [REDACTED] subjected the petitioner to battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(vi). The police report does not corroborate the petitioner's description of the July 22, 2004 incident and does not indicate that the police observed any property damage, believed that threats were involved, or were concerned about the petitioner's safety. [REDACTED] provides no substantive, detailed account of any incidents of abuse that she witnessed or probative description of the effects of [REDACTED] alleged abuse on the petitioner that she observed. [REDACTED] also provides no probative analysis of the petitioner's situation. Accordingly, the present record does not establish that [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that Citizenship and Immigration Services (CIS) must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his case.

As always, the burden of proof in visa petition proceedings remains entirely 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 the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.