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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE:

EAC 05 136 53581

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:



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, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 wife battered or subjected him to extreme cruelty.

On appeal, counsel submits a brief and additional evidence.

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 Kenya who entered the United States on January 11, 2000 as a nonimmigrant student (F-1). On November 13, 2003, the petitioner married [REDACTED] a U.S. citizen, in New York City. On April 9, 2005, the petitioner filed this Form I-360. On August 31, 2005, the director requested additional evidence of [REDACTED] battery or extreme cruelty. The petitioner submitted further evidence on October 24, 2005. On December 27, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty.

On appeal, counsel asserts that the director unfairly assessed the evidence regarding the petitioner's treatment at the Main Street Counseling Center and submits an additional letter from the Center and a second affidavit from the petitioner. We concur with the director's conclusion and find that counsel'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 or extreme cruelty, the petitioner initially submitted affidavits from himself and his friend, [REDACTED] letter from the Main Street Counseling Center, a related insurance statement, and a psychological assessment of the petitioner by [REDACTED]. In his March 30, 2005 affidavit, the petitioner states that shortly after their marriage, [REDACTED] began making excessive demands for extravagant items and overspending; constantly criticized his appearance, manners and actions; called him derogatory names; was unfaithful, but accused him of infidelity; humiliated him in front of her friends by demeaning his masculinity; called numbers on his cellular telephone and embarrassed him; argued with the officer at their immigration interview; and threatened to "call immigration" and send him back to Kenya. The petitioner reports feeling pressured, tortured, humiliated, isolated and "breaking down psychologically" as a result of [REDACTED] behavior.

The petitioner's friend, [REDACTED] states, "After they were married, I witnessed [REDACTED] constantly give [the petitioner] a difficult time. She was always making fun of him because of his height." [REDACTED] does not discuss any particular incidents of abuse that he witnessed and does not further explain how [REDACTED] gave the petitioner "a difficult time" and whether or not her behavior involved more than ridiculing [REDACTED] physical stature.

In a letter dated March 22, 2005, [REDACTED] states, "[The petitioner] has attended therapy sessions with me at Main Street Counseling Center. His wife accompanied him to one of the sessions." [REDACTED] does not discuss the substance of the petitioner's counseling sessions, but the petitioner also submitted a letter from Oxford Health Plans dated January 26, 2005, which states that the insurance company approved the petitioner's receipt of psychological services from the Main Street Counseling Center on January 17, 2005 and would cover ten visits. The services are described as, "Psyc dx interview examination, Psychotx ov/op behv mod 45-50 mn [sic]."

In her assessment dated May 11, 2005, [REDACTED] summarizes the petitioner's marital experiences as related to her by him during their single meeting on April 28, 2005. [REDACTED] diagnoses the petitioner with major depressive disorder, moderate severity; partner relational problem and chronic marital problems. [REDACTED] concludes that the petitioner's "symptoms and presentation are highly consistent with what one would expect to find in someone who has suffered the type of emotional abuse that he reports."

In response to the director's request for further evidence, the petitioner submitted a letter dated October 6, 2005 from the Main Street Counseling Center verifying that the petitioner attended 11 counseling sessions at the Center from January 17 to October 10, 2005. The letter does not further discuss the substance or nature of the petitioner's counseling. The petitioner also submitted an affidavit from his uncle, [REDACTED] who states that on one occasion when he visited the petitioner and [REDACTED] she did not offer him a drink or prepare him a meal, as is customary, but instead "yelled at [the petitioner] and called him a 'foolish African.' She followed up by saying that she does not serve Africans. I vividly remember her face and I could tell that she was prepared to take a violent action."

On appeal, the petitioner submits a third letter from the Main Street Counseling Center dated October 20, 2005 and addressed to counsel, which states that the Center is unable to provide "expert witness" testimony because the petitioner's prior counselor [REDACTED] left the Center. The petitioner also submits medical records dated February 11, 2005, which show that he was prescribed antidepressant medication by the West Side Medical Office. On appeal, the petitioner explains that the Main Street Medical Center staff does not have the time to write detailed reports. The petitioner further states that because of [REDACTED] behavior, he did not socialize and was isolated from his family members. The petitioner also indicates that he cannot humiliate himself any further by asking people who received inappropriate telephone calls from his wife to provide supporting testimony.

On appeal, counsel claims that the director inadvertently discriminated against the petitioner because he could not provide more thorough testimony from Main Street Counseling Center due to his lack of

financial resources. We have reviewed the letters and related evidence regarding the petitioner's mental health treatment, which show that he received psychological counseling and was prescribed antidepressant medication before this petition was filed. Combined with [REDACTED] assessment, these documents indicate that the petitioner received psychological treatment for mental health conditions related to his problematic relationship with [REDACTED]. The present record does not, however, establish that [REDACTED] behavior rose to the level of battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The evidence does not indicate that [REDACTED] ever assaulted the petitioner or threatened him with violence and the record does not demonstrate that [REDACTED] nonviolent behavior constituted psychological or sexual abuse or exploitation, or was part of an overall pattern of violence.

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.