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**U.S. Citizenship  
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **AUG 21 2006**  
EAC 05 219 50850

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:

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. Wienmann, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 her U.S. citizen husband battered or subjected her to extreme cruelty.

On appeal, the petitioner submits a letter.

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 Guyana who entered the United States on July 9, 1995 as a nonimmigrant visitor (B-2). On May 24, 2000, the petitioner married [REDACTED] a U.S. citizen, in New York City. On July 27, 2005, the petitioner filed this Form I-360. On August 12 and October 3, 2005, the director requested additional evidence of, *inter alia*, battery or extreme cruelty and the petitioner submitted further evidence on September 23 and November 25, 2005. On January 11, 2006, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty. The petitioner timely appealed.

On appeal, the petitioner further describes [REDACTED]'s alleged abuse. We concur with the director's conclusion and find that the petitioner's testimony on appeal does not overcome the ground for denial. Nonetheless, the case 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 her undated personal statement in which she reports that [REDACTED] had intimate relations with other women in their home, humiliated her in front of her friends, took her paycheck every week, and did not attend their immigration interview appointments.

In response to the director's August 12, 2005 notice, the petitioner submitted a second undated personal statement in which she explains that [REDACTED] stopped working, called her names and on one occasion told her to leave their home when he was there with another woman. The petitioner states that she spent the night on the street and could not go to work the next day. The petitioner also reports that [REDACTED] demanded money from her, stole her jewelry and sold her clothes for money to buy drugs. The petitioner reports that [REDACTED] threatened to kill her and forced her to have intimate relations against her will.

In response to the director's October 3, 2005 request, the petitioner submitted a third undated statement and letters from three friends. In her third statement, the petitioner explains, "I was so scared of [Mr. ██████████] hurting me in every way, that I was not in counseling, because I never knew that there was places to receive such services." The petitioner further states that she developed a fear and mistrust of people and so she never discussed her problems with anyone and is only now finding out about abuse from television and her pastor.

██████████ states that she has known the petitioner for many years and "throughout the difficult times of her marriage." ██████████ reports that the petitioner moved in with her so that ██████████ could not find her, but ██████████ does not discuss any particular incidents of ██████████'s abuse that she witnessed. ██████████ states that she has known the petitioner for over 35 years and that the petitioner called her a few times "to complain about her husband." ██████████ provides no further explanation and does not indicate that she has any knowledge of ██████████'s alleged abuse. Shelan ██████████ states, "[the petitioner] told me, and, I personally observed her husband's disrespectful and abusive behavior towards her. There were times when he, in fully [sic] view of the public and in a loud and hostile manner would describe her in lewd language." ██████████ does not further describe any specific incidents of abuse that she observed.

On appeal, the petitioner submits a fourth undated statement in which she reports that ██████████ would choke and punch her until she gave him her money; rape her after doing drugs; threatened to have her deported if she called the police; sold items from their home, including her belongings; and threatened to kill her and get rid of her body. The petitioner states that she became tired of living and contemplated suicide. The petitioner reports that sometime after January 2004, ██████████ left and she has not seen or heard from him since that time.

The present record does not demonstrate that ██████████ subjected the petitioner to battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Apart from her description of ██████████'s infidelity in her first and second statements, the petitioner does not discuss specific incidents of his purported abuse in probative detail. The letters of ██████████ and ██████████ provide no substantive, detailed descriptions of ██████████'s alleged abuse that they witnessed or their observations of the effects of his alleged abuse on the petitioner's physical and mental health. Consequently, their letters are of little probative value. Apart from their letters, the petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) to corroborate her own statements. The petitioner explains that ██████████ threatened to have her deported if she called the police and that she developed a fear and mistrust of people such that she never discussed her marital problems with anyone. However, the petitioner also indicates that she discussed ██████████'s behavior with her pastor, yet she submits no testimony from her pastor or any other clergy. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The present record fails to 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 her 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.