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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 08 2006
EAC 05 024 53229

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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 because the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his citizen spouse.

On appeal, counsel submits a brief.

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 or a child of 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 eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which 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 Iran who entered the United States as an F-1 nonimmigrant student on July 30, 1999. On December 16, 2002, the petitioner married D-L¹, a U.S. citizen, in Harris County, Texas. On November 1, 2004, the petitioner filed this Form I-360.² On May 19, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded to the director's request on July 18, 2005. The director denied the petition on September 14, 2005 and the petitioner, through counsel, timely appealed on October 17, 2005.

On appeal, counsel asserts that the petitioner submitted sufficient evidence to establish that he was physically abused and subjected to extreme cruelty. Upon review, we concur with the director's conclusion and find that counsel's claims on appeal do not overcome the grounds 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).

To establish his claim of abuse, the petitioner submitted two personal statements, a psychiatric evaluation, two police reports, and affidavits from friends and acquaintances.

In his initial statement, the petitioner indicated that his spouse lied to him, took money from him, and had a drug and alcohol problem. The petitioner describes one incident where he and his spouse went to a party where his spouse had too much to drink and started cursing at his friends. The petitioner further claims that after returning home that evening they argued about his spouse's behavior and that she slapped him in his face. Although the petitioner also states "since that time, any time we had argued, she raised her hand on me and slapped my face," the petitioner does not actually describe any further incidents of physical abuse. The petitioner then describes an incident in which his stepdaughter's boyfriend and two of his friends came to the petitioner's home, pushed and hit the petitioner and robbed him by taking his wallet and a second incident where his stepdaughter poured bleach into the petitioner's shampoo bottle and on the carpet and mirror. It is noted that the statute requires that the abuse be perpetrated against the petitioner by his or her spouse. While the petitioner alleges that the robbery was his spouse's "plan" so she could show that she could "scare" the petitioner, there is no evidence of his spouse's involvement in this incident. We note that although the petitioner submits a police report documenting that the robbery did take place, the police report indicates that the petitioner was robbed by "possible known suspect(s)," the report does not reference the petitioner's spouse. The petitioner submitted no further evidence

¹ Name withheld to protect individual's identity.

² The record also contains an unadjudicated Form I-130, Petition for Alien Relative, filed in the petitioner's behalf by his spouse and a Form I-485, Application to Adjust Status, that was administratively closed on March 11, 2005.

to establish whether anyone was ever arrested or charged for this incident. Given that there is no indication that his spouse was involved in either the robbery incident or the bleach incident, the petitioner has failed to show that the incidents are considered to be abuse that was perpetrated against him by his spouse.

In his second statement, the petitioner reiterates his previous claims regarding his spouse's use of drugs and alcohol, the resulting lies and use of money to support her addictions. Although the petitioner makes no further claims regarding physical abuse, he describes a separate incident not mentioned in his first statement in which someone broke into their apartment and stole the petitioner's computer, money, and necklace. While the petitioner states his belief that his spouse was involved in the incident and submits a police report from this incident, we do not find the petitioner's claims regarding this incident are sufficient to establish that he was battered or subjected to extreme cruelty. Despite the petitioner's stated suspicions, there is no evidence that the petitioner's spouse was involved in this crime. The police report submitted by the petitioner confirms that the petitioner's residence was burglarized, however, there is no evidence of the petitioner's spouse's involvement in the burglary. The record contains no evidence such as an arrest report or court documentation to show that the petitioner's spouse was charged or convicted as being a part of this incident.

The psychological evaluation submitted on the petitioner's behalf by [REDACTED] which was completed after a single interview with the petitioner, affirms the claims contained in the petitioner's statements regarding the petitioner's spouse's drug and alcohol use. While [REDACTED] further claims that the petitioner was "subject to multiple episodes of deception, verbal abuse, betrayal, humiliation, and cruelty," the descriptions of these incidents vary from those given by the petitioner and contain several claims that were not mentioned in either of the petitioner's statements. For example, the evaluation indicates that "[r]outinely, when [the petitioner] did not comply with [his spouse's] demands for money, she threatened to have him beaten up by her "friends." The petitioner's statements, however, contain no such description of routine threats. A second example is the statement in the evaluation that the petitioner was "regularly demeaned . . . with racial slurs" and other derogatory names. Neither of the petitioner's statements describes any incidents of verbal abuse, name calling or racial slurs. As noted above in relation to the party where the petitioner's spouse had too much to drink, the petitioner indicated that his wife began cursing at the hosts. Contrary to the information contained in the psychological evaluation, the petitioner's description does not include any racial slurs nor does it indicate that any of the statements were directed at the petitioner. The inconsistencies between the petitioner's statements and the psychological evaluation detract from the credibility and probative value of this evidence.

The remaining evidence, which consists of affidavits and statements from the petitioner's friends and relatives do not add any probative value to the petitioner's claims of abuse. The first affidavit, submitted by the petitioner's stepson [REDACTED], indicates that the petitioner lived with [REDACTED] mother, that he helped get his mother away from drugs and helped her financially. Although [REDACTED] indicates that the petitioner and his spouse argued about her drug and alcohol use, he does not indicate that there was any physical, psychological, emotional or verbal abuse. In the statement provided by [REDACTED] the petitioner's stepdaughter, [REDACTED] indicates that the petitioner "tried hard" to make the marriage work and to help her mother "quit her habit." While [REDACTED] also indicates that there were "arguments," she does not provide any statement regarding the abuse claimed by the petitioner. Similarly, the remaining letters from the petitioner's friends, brother, cousin, co-worker, and uncle, while confirming the petitioner's spouse's drug and alcohol use and the fact that the petitioner resided with his spouse, do not describe any incidents of abuse. Accordingly, these affidavits do not carry sufficient weight to support the petitioner's claim of abuse.

We concur with the director's determination that the evidence submitted below does not establish that the

petitioner's former wife battered or subjected him to extreme cruelty during their marriage and we do not repeat the director's discussion here.

On appeal, counsel claims that the petitioner has established that he was battered and subjected to extreme cruelty. To support her statement, counsel refers to the petitioner's claim regarding being slapped by his spouse, her drug use, and the effect her drug use had on their marriage. After full review of the record and consideration of the petitioner's claims, we conclude that the present record fails to demonstrate the requisite battery or extreme cruelty pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

In our preceding discussion, we have addressed all instances of alleged physical abuse stated by the petitioner. The sole evidence of battery consists of the petitioner's statement describing a single incident in which he was slapped and the proceeding claim that he was slapped in every argument thereafter. We do not find this testimonial evidence carries sufficient weight to establish that the petitioner was battered by his spouse. We note that none of the affidavits submitted on the petitioner's behalf, including the petitioner's stepdaughter who resided with the petitioner and his spouse, document any incident of physical abuse or describe being a witness to such an act or its aftereffect.

The evidence also does not demonstrate that the petitioner's former wife subjected him to extreme cruelty during their marriage. The petitioner claims his former wife subjected him to extreme cruelty through an extramarital affair, her drug and alcohol abuse, the allegation of the theft of money and his passport, deposit of their joint tax return refund check without the petitioner's permission, and verbal abuse. As discussed above in our review of the relevant evidence, the statements provided by the petitioner and the information contained in the psychological evaluation contain inconsistencies which detract from the credibility of the evidence. While we do not dispute the petitioner's claims regarding her spouse's drug abuse its resulting effect on their marriage, we do not find that her drug use is evidence that the petitioner was threatened, forcefully detained, psychologically or sexually abused or exploited or that his spouse's actions were part of an overall pattern of violence.

Based upon the above discussion, we concur with the determination of the director that at the time of his decision, the petitioner failed to establish that he had been battered or subjected to abuse by his spouse as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner's appellate submission does not overcome this finding. 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 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.