

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

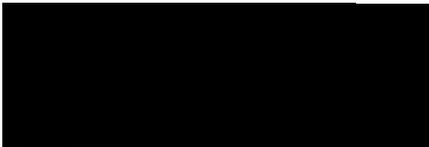
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B9

**PUBLIC COPY**



FILE:

EAC 05 038 52505

Office: VERMONT SERVICE CENTER

Date: JUL 03 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.

  
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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 during their marriage.

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).

An alien who has divorced a United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person

who was a bona fide spouse of a United States citizen within the past 2 years and –

\* \* \*

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.

Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC).

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 the Czech Republic who entered the United States on November 28, 1997 as a nonimmigrant visitor (B-2). On August 16, 2002, the petitioner married [REDACTED] a U.S. citizen, in Ohio. On March 8, 2004, the couple was divorced by order of the Franklin County, Ohio Common Pleas Court. The petitioner filed this Form I-360 on November 22, 2004. On May 18, 2005, the director issued a notice explaining the insufficiency of the relevant evidence submitted with the petition and asked the petitioner to submit, *inter alia*, additional evidence that [REDACTED] battered or subjected him to extreme cruelty during their marriage. The petitioner requested and was granted additional time to respond and on September 1, 2005 submitted further evidence. On November 1, 2005, the director denied the petition because the record did not establish the requisite battery or extreme cruelty. The petitioner timely appealed.

As we concur with the director's determination that the petitioner meets all the other statutory requirements, the only issue on appeal is whether [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage. We concur with the director's conclusion and find that the petitioner's claims on appeal do not overcome this ground for denial. Beyond the director's decision, the record also fails to establish that the petitioner had a qualifying relationship with [REDACTED] pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. 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 his affidavit dated November 8, 2004, in which he states that [REDACTED] screamed, yelled and physically attacked him during their marriage. The petitioner further reports that [REDACTED] continuously suspected him of infidelity and threatened to kill herself and kick him out of the house. The petitioner explains that he called the police several times when [REDACTED] physically attacked him, but did not file a police report because he did not want to jeopardize the former couple's efforts to gain custody of [REDACTED] daughter. The petitioner states that their relationship ended when [REDACTED] became involved with another man.

In response to the director's request for additional evidence, the petitioner submitted a second affidavit dated August 31, 2005, in which he states that by the end of 2001, [REDACTED] began to act irrationally, would constantly accuse him of infidelity, repeatedly call and check up on him and interfere with his work. The petitioner reports that [REDACTED] prevented him from going out with his friends and would physically harm herself and tell others that he had abused her. The petitioner states that [REDACTED] hit him with her keys causing his head to bleed, scratched his back, ripped his shirt, waved scissors at him, hit him with a hockey stick and then started hitting herself. The petitioner reports that [REDACTED] once tried to hit his car with her car and swerved in front of him trying to get him to hit her car. The petitioner explains that [REDACTED]'s behavior was cyclical: screaming and beating him, but then professing her love and promising to change.

Other relevant evidence submitted to support the petitioner's claim of battery and extreme cruelty does not substantially corroborate the petitioner's statements. The petitioner submitted two police call records for incidents at the former couple's residence. The first record is dated April 27, 2003, and states that the petitioner called and "said his wife is beating him up[.] No weap[ons.] Can hear her going off in the background." The second record is dated January 31, 2004 and states, "Check on the wellbeing of a 3 [year] old girl – the mother [REDACTED] was yelling and throwing things in the house." The purported transcript of this call shows that the call was made by the paternal grandmother of [REDACTED]'s child who was concerned about the safety of her granddaughter because Ms. [REDACTED] was upset with her and her "ex-boyfriend" and was throwing stuff in the house. These two incident reports record the callers' statements and indicate that on April 27, 2003, the operator overheard [REDACTED] "going off." The reports do not establish that [REDACTED] battered or subjected the petitioner to extreme cruelty.

The petitioner also submitted affidavits from five friends and transcripts of recordings of undated conversations between himself and [REDACTED]. The petitioner's friends [REDACTED] and [REDACTED] confirm that [REDACTED] would disturb the petitioner at work and accuse him of infidelity; that the couple got counseling; that the petitioner

seemed very stressed; and that the couple eventually divorced. The affidavits do not indicate that any of the petitioner's friends had personal knowledge of [REDACTED] alleged battery or extreme cruelty, or that they witnessed significant changes in the petitioner's physical or mental health during his marriage that would have been consistent with his subjection to extreme cruelty.

The transcripts consist of numerous arguments between [REDACTED] and the petitioner. Although [REDACTED] repeatedly insults the petitioner and addresses him with derogatory names and expletives, the petitioner also repeatedly insults [REDACTED]. Much of the conversation is transcribed as inaudible and the transcripts include one conversation indicating that the petitioner and [REDACTED] were mutually, physically combative. Hence, the transcripts are of little probative value.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The petitioner does not state that he ever sought assistance in escaping or dealing with [REDACTED]'s alleged abuse from, for example, social service agency personnel or that he ever sought medical or mental health treatment for the effects of [REDACTED] alleged abuse. Although he 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). On appeal, the petitioner again explains that he did not make a police report because he did not want to cause problems for [REDACTED] that would prevent her from gaining custody of her daughter. He also explains that he made excuses for [REDACTED] behavior in front of their friends to avoid embarrassment. The petitioner's statements explain the lack of police reports except for the two call records and the lack of probative detail in his friends' affidavits, but his explanation does not overcome the director's ground for denial. Accordingly, the present record fails to establish the battery or extreme cruelty required by section 204(a)(1)(A)(iii) of the Act.

### *Qualifying Relationship*

An alien who has divorced an abusive U.S. citizen is eligible for immigrant classification under section 204(a)(1)(A)(iii) only if the self-petition is filed within two years of the divorce and the divorce was connected to the U.S. citizen's battery or extreme cruelty. Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC). Although the petitioner filed his Form I-360 within two years of his divorce from [REDACTED], he has not established that [REDACTED] battered or subjected him to extreme cruelty during their marriage. Hence, he has not demonstrated the requisite connection between their divorce and such battery or extreme cruelty. Accordingly, the present record fails to establish that the petitioner had a qualifying relationship with [REDACTED] pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act.

The present record does not establish that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii) of the Act, or that their divorce was connected to such battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC) 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 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.