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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [Redacted]
EAC 02 282 52522

Office: VERMONT SERVICE CENTER

Date: JUL 03 2006

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:



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 The decision of the director will be withdrawn and the petition will be remanded for further action.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, 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 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 Afghanistan who entered the United States on May 16, 2000 as a nonimmigrant fiancé (K-1). On July 24, 2000, the petitioner married [REDACTED], a U.S. citizen, in Colorado. On August 28, 2001, their marriage was dissolved by order of the Arapahoe County, Colorado District Court. On September 21, 2001, the petitioner's Form I-485 application to adjust status was denied and he was served with a Notice to Appear for removal proceedings. On December 8, 2005, the Denver, Colorado Immigration Court administratively closed the removal proceedings against the petitioner. On September 9, 2002 the petitioner filed this Form I-360. On July 22, 2003, the director issued a notice requesting the petitioner to submit additional evidence that, *inter alia*, [REDACTED] battered or subjected him to extreme cruelty during their marriage. Counsel requested and was granted additional time to respond and submitted further evidence on November 18, 2003; January 20, February 2, April 22, May 3, August 19 and October 23, 2004. On October 19, 2005, the director denied the petition because the record did not establish that [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage. The petitioner, through counsel, timely appealed.

On appeal, counsel asserts that discrepancies in the record discussed by the director are immaterial, not contradictory and do not impugn the petitioner's credibility. We concur with the director's conclusion and find that counsel's claims on appeal do not overcome the 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 submitted his own written statement, documents related to his divorce and declarations from ten relatives, friends and acquaintances. The petitioner states that when he arrived in the United States, [REDACTED] took his passport and documentation. He reports that [REDACTED] and her family forced him to give them his paychecks and that [REDACTED] deposited the money he earned in a bank account in her name only and would not give him access to the account. The petitioner explains that he had to get a second job because [REDACTED] and her family did not give him any spending money.

The petitioner states that [REDACTED] would drive him to places, but leave him alone with no way to return home; that she would promise to pick him up at work, but not come; or that she would come to his workplace, but drive away as he approached the car. The petitioner reports that when he did not obey [REDACTED] orders or questioned her, she insulted him and his parents, threatened to withdraw her immigration sponsorship and send him back to Afghanistan, derided his masculinity and threatened to cut his male organs on one or two occasions.

The petitioner states that in May 2001, [REDACTED] asked him to sign papers for the immigration process. He states, "I could not read English so I signed the papers, trusting her." The petitioner reports that on May 21, 2001, [REDACTED] and her family moved to another house and [REDACTED] told the petitioner to leave their former residence and that she wanted a divorce. The petitioner explains that he slept in his car for about a month because he had nowhere to live. The petitioner states that [REDACTED] threatened to call the police and have him deported if he tried to see her.

In August 2001, the petitioner states that [REDACTED] gave him documentation of their divorce. He explains that he was previously unaware that she had filed for divorce and that he then realized that the papers she had him sign in May 2001 were actually divorce papers. The petitioner states that on August 15, 2001, [REDACTED] called him and that when he professed his love, she told him to shut his mouth or she would kill him with a gun. The petitioner reports being very scared. The petitioner also explains that during his marriage, he could not speak English, did not have any friends in the United States and could not share his feelings because in his culture it is very rare for a husband to be humiliated by his wife. The petitioner states that he felt he had to endure [REDACTED] behavior because he feared being sent back to Afghanistan.

Other relevant evidence does not fully corroborate the petitioner's statements and the record as a whole does not establish that [REDACTED] subjected the petitioner to extreme cruelty. [REDACTED] the petitioner's sister, states that she noticed that [REDACTED] was always shouting and that one day she

witnessed [REDACTED] get mad, shout and drive off, leaving the petitioner behind. [REDACTED] further states that one day the petitioner came to her crying because [REDACTED] had kicked him out of the house. [REDACTED] reports that the petitioner "was in really bad shape, he got sick and was not talking to anyone, and was spending nights in his car." [REDACTED] the petitioner's other sister, states that his marriage fell apart after about four months and that the petitioner lived with her for four months. [REDACTED] states that [REDACTED] shouted at the petitioner and threatened him, but she does not indicate that she personally witnessed any incidents of [REDACTED] physical or verbal abuse.

[REDACTED] states that the petitioner sought his help when he realized that [REDACTED] had deceived him regarding the divorce documents. [REDACTED] reports that while the petitioner was in his office, the petitioner's brothers-in-law, [REDACTED] and [REDACTED], arrived and verbally assaulted and threatened the petitioner. Yet the petitioner also submitted a letter from his brother-in-law, [REDACTED] who states that the petitioner and [REDACTED] married in good faith, but separated because their marriage did not work out.

[REDACTED] and [REDACTED] state that [REDACTED] abused the petitioner and deceived him regarding the divorce documents. Yet none of these individuals state that they were present when the petitioner signed the divorce documents. They do not describe in detail any other incidents of abuse that they witnessed or significant changes in the petitioner's physical or mental health that they believe were caused by [REDACTED] extreme cruelty. The petitioner also submitted a letter allegedly from [REDACTED]. This letter was written in a foreign language and was submitted with an English translation that was not certified pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Even if properly certified, however, [REDACTED] alleged statements do not establish [REDACTED] extreme cruelty. [REDACTED] allegedly states that she once invited the former couple to her home for dinner, but the petitioner came alone and told her that [REDACTED] had refused to come with him and that he was very sad. Her purported statement indicates marital conflict, but does not establish extreme cruelty.

The petitioner submitted copies of nine documents related to his divorce proceedings. Eight of these documents were signed by the petitioner, including the Petition for Dissolution of Marriage that was signed by the petitioner on May 29, 2001, the Affidavits for Decree Without Appearance of Parties that were signed by the petitioner on June 13 and August 15, 2001, and the Separation Agreement that was signed by the petitioner on August 15, 2001. Despite the various dates of the petitioner's signatures on these documents, the petitioner discusses only one occasion on which [REDACTED] asked him to sign papers in May 2001. Although the petitioner and several of the support letters state that the petitioner was tricked by [REDACTED] into signing the divorce documents, none of the testimonial evidence describes the relevant events in significant, chronological detail that is consistent with the submitted court documents.

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 explains that he was ashamed of [REDACTED] mistreatment during their marriage and that he could not share his feelings given his cultural background. His statements

thus indicate that the support letters from relatives and friends are largely based on his description of events after the breakdown of his marriage, rather than on the authors' contemporaneous observations of [REDACTED] behavior and its effects on the petitioner. [REDACTED]'s alleged threats to call the police and have the petitioner deported may explain why the petitioner did not call the police or seek other legal assistance in escaping [REDACTED]'s alleged abuse. However, the petitioner does not state that he ever sought assistance from other sources such as religious figures, social service agencies, or medical personnel. 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).

In addition, the record contains two notable discrepancies regarding [REDACTED] actions in dissolving the former couple's marriage. First, as mentioned above, the petitioner recounts only one occasion, in May 2001, when [REDACTED] asked him to sign papers, but the record contains court documents signed by the petitioner on two additional dates. Second, the petitioner submitted a letter from [REDACTED] who states that that [REDACTED] threatened to put the petitioner in jail unless he signed the papers, yet the petitioner himself states that he signed the papers willingly and does not indicate that [REDACTED] so threatened him.¹ On appeal, counsel asserts that [REDACTED] assumed both postures at different times in order to manipulate the petitioner into signing the divorce documents. The petitioner only recounts one incident where he signed papers at [REDACTED]'s request. He does not state that she ever threatened him with imprisonment if he did not sign the documents and he does not explain the discrepancy between his testimony and [REDACTED]'s statement. Accordingly, the record does not corroborate counsel's assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The relevant evidence does not fully corroborate the petitioner's statements and 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).

Qualifying Relationship

Beyond the director's decision, the petitioner has failed to establish that he has a 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

¹ As noted by the director, the letters from [REDACTED] and [REDACTED] submitted with the petitioner's application for cancellation of removal, similarly state that [REDACTED] threatened to put the petitioner in jail if he did not sign the papers.

that she battered or subjected him to extreme cruelty. Hence, he has not demonstrated the requisite connection between their divorce and [REDACTED] alleged battery and extreme cruelty. Consequently, 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 Citizenship and Immigration Services (CIS) to 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.