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**U.S. Citizenship
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Services**

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FILE:



Office: VERMONT SERVICE CENTER

Date: **JUL 06 2006**

EAC 04 108 54025

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 Vermont Service Center Director 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the spouse of an abusive United States citizen. The petitioner filed his Form I-360 on March 1, 2004.

On August 9, 2005, the director denied the petition because the record failed to establish that the petitioner or his children had been battered by, or the subject of extreme cruelty perpetrated by, his U.S. citizen spouse.

On appeal, counsel for the petitioner indicates that within 30 days he would submit supplemental evidence, which would establish mental cruelty. More than six months have lapsed and nothing more has been submitted to the record. This office sent a facsimile to the petitioner's counsel to verify whether counsel had submitted additional evidence. Counsel failed to respond to the facsimile.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states, in pertinent part:

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 regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-

petitioner or the self-petitioner's child and must have taken place during the self-petitioner's marriage to the abuser.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on March 10, 1997 in Scurry County, Texas. The petitioner's wife filed a Form I-130 petition on his behalf on May 6, 1997. The petition was approved on January 17, 1998. The petitioner last entered the United States without inspection on November 15, 1998 near or at Presidio, Texas. The petitioner filed a Form I-485 application on August 7, 1999. The Form I-485 was denied and the approval of the Form I-130 was revoked on July 18, 2003 because the petitioner's wife withdrew the underlying petition. The petitioner was placed in removal proceedings on July 25, 2003. On September 29, 2005, an immigration judge granted the petitioner voluntary departure until January 27, 2006.

The first issue to be addressed in this proceeding is whether the petitioner established that he or his children have been battered by or have been the subject of extreme cruelty perpetrated by his citizen spouse. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he or his children have been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that his former spouse subjected him or his children to battery or extreme cruelty. The petitioner, through counsel, submitted additional evidence on February 2, 2005.

The evidence relating to abuse consists of the following:

- The petitioner's affidavit dated February 21, 2004 in which he states that his daughter told him that her mother had forced her to eat rat poison and that his wife occasionally slapped him. He said that his wife took his documents, making it difficult to legalize his immigration status.
- A divorce decree finding that "credible evidence has been presented that [the petitioner's spouse] has a history or pattern of child neglect directed against [the two children of the petitioner and his spouse]."¹
- An affidavit dated March 23, 2005, written by [REDACTED], a physician, indicating that he treated the petitioner for depression on July 16, 2001 and on November 7, 2003.
- An affidavit of [REDACTED], a friend of the petitioner, stating that the petitioner's spouse abused the petitioner's children "both physically and mentally" in his presence and that of his family.

Upon review of this evidence, we concur with the findings of the director that the evidence is not sufficient to establish that the petitioner was battered by or subjected to extreme cruelty by his

¹ See pages six and seven of divorce decree.

spouse. First, the petitioner's claims that his spouse took most of his documents to prevent him from explaining his immigration situation is not sufficient to demonstrate that the petitioner was the victim of any act or threatened act of violence, forceful detention which resulted or threatened to result in physical or mental injury, psychological, sexual abuse or exploitation, or an overall pattern of violence. The affidavits provided by the petitioner do not describe any incidents of battery and fail to provide sufficient details regarding the petitioner's relationship with his citizen spouse to establish that the petitioner was subjected to extreme cruelty. [REDACTED] merely asserts that the petitioner's spouse abused the petitioner's children physically and mentally, without providing details about specific instances of abuse. [REDACTED] the petitioner's physician, indicated that he treated the petitioner for depression and that the petitioner "was affected by the circumstances in his life particularly his wife leaving with his children." Similarly, although [REDACTED] indicates that the petitioner was affected by his wife leaving with his children, such facts are not sufficient to establish claim of battery or extreme cruelty. It is noted that although the petitioner claims that his wife "had on occasion slapped [him], neither the affidavits submitted by the petitioner's friend and his physician confirm that such abuse took place. Accordingly, the petitioner's statement, on its own, does not carry sufficient weight to establish that he had been slapped.

The petitioner alleged that his daughter told him that her mother had forced her to eat rat poison. The petitioner failed to submit any corroborating documentation of such an incident, such as an emergency room report, or a physician's report. The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). 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).

The petitioner submitted his divorce decree finding that "credible evidence has been presented that [the petitioner's spouse] has a history or pattern of child neglect directed against [the two children of the petitioner and his spouse]." The record does not establish that child neglect is tantamount to battery or extreme cruelty.

The case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID). The director shall specifically request additional evidence regarding child abuse or neglect, such as but not limited to, a report from Child Protective Services or family court services.

The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

In this case, the director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of an NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of his case.

The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the petitioner and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always in these proceedings, the burden of proof rests solely 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 this decision.