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FILE: [REDACTED]  
EAC 05 058 52475

Office: VERMONT SERVICE CENTER

Date: JUL 10 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:

[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 The decision of the director will be withdrawn and the petition will be remanded for further action.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, finding that the record did not establish the petitioner's good faith marriage to his U.S. citizen wife or that his wife battered or subjected him to extreme cruelty.

On appeal, counsel submits copies of documents previously submitted.

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.

\* \* \*

*(ix) Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner in this case is a native and citizen of Grenada who entered the United States on November 17, 1996 as a nonimmigrant visitor (B-2). On September 1, 1999, the petitioner married [REDACTED] a U.S. citizen, in New York. On December 13, 2004, the petitioner filed this Form I-360. On August 15, 2005, the director issued a notice requesting additional evidence that, *inter alia*, Ms. [REDACTED] battered or subjected the petitioner to extreme cruelty and that the petitioner married Ms. [REDACTED] in good faith. On October 14, 2005, the petitioner submitted further evidence. On December 6, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty and good faith marriage. The petitioner, through counsel, timely appealed.

As we concur with the director's determination that the petitioner meets all the other statutory requirements, the only issues on appeal are whether Ms. [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage and whether the petitioner entered their marriage in good faith. Counsel submits no brief or additional evidence on appeal. Although we concur with the director's determination, the petition will nonetheless 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 a temporary order of protection that he obtained against Ms. [REDACTED] on November 26, 2004 and support letters from three acquaintances. In his petition for the order of protection, the petitioner states that Ms. [REDACTED] insulted him; stole his money and jewelry; had intimate relations with other men in their home; kicked, slapped, punched and threatened the petitioner with a knife; and hit him with a wooden block in November 1999, which resulted in the dislocation of his shoulder and the his treatment at Kings County Hospital. The temporary order of protection was granted until December 20, 2004 when a hearing on the petition was scheduled. The petitioner submitted no evidence of the outcome of this hearing.

[REDACTED] states that there were visible signs of abuse on the petitioner's back and legs; that he was once admitted to the hospital for a dislocated shoulder, and that the police were involved, but Ms. [REDACTED] does not provide any probative details about any of these events. Ms. [REDACTED] explains that the petitioner called her many times to tell her about Ms. [REDACTED] abuse, but she does not describe any particular incidents of abuse that she witnessed. [REDACTED] states that Ms. [REDACTED] once hit the petitioner with a vase giving him a concussion, but that the petitioner was too embarrassed to go to the emergency room and that Ms. [REDACTED] threatened that if he called the police she would have him deported. Mr. [REDACTED] does not indicate whether he personally witnessed this incident or any other instances of abuse, or whether his statements are based on the petitioner's description of these events.

[REDACTED] states that the petitioner often called her and said he was being abused. She reports that she once visited the petitioner on an unspecified date and saw bruises and scars all over his body. Ms. [REDACTED] states that the petitioner spoke to the police at her insistence, but the record is devoid of any corroborative police records.

In response to the director's request for additional evidence, the petitioner submitted his own statements and affidavits from two friends. In his "Personal Statement of Abuse," the petitioner reports that some months after their marriage, he came home to find his wife having intimate relations with her boyfriend in their bedroom. He states that he left and stayed with a friend, but that he and Ms. [REDACTED] reconciled after several weeks. The petitioner reports that Ms. [REDACTED] controlled, but did not take care of the former couple's finances; that she did drugs and drank excessively and that she disappeared for days. The petitioner states that Ms. [REDACTED] would smash anything her hands came upon, would display a knife, insult the petitioner, threaten to get him deported, would accuse him of infidelity and would kick, punch and slap him in the face "ever[y] so often." The petitioner explains that he was scared to call the police because he did not want to hurt Ms. [REDACTED] and because her boyfriends were gang members. The petitioner further states that Ms. [REDACTED] had an abortion against his wishes and refused to jointly file tax returns with him. The petitioner reports that he was very stressed, could not sleep, eat or work properly because of Ms. [REDACTED] behavior and that she destroyed his self-esteem. In his "Statement on the Temporary Order of Protection [TPO]," the petitioner explains that he did not follow up on the TPO or

report Ms. [REDACTED] alleged abuse to the authorities because she threatened to get her boyfriend to harm him and because her boyfriends were gang members.

[REDACTED] states that she referred the petitioner and Ms. [REDACTED] to a psychologist who “mediated in resolving disputes and abuses of [the petitioner] by his wife.” Ms. [REDACTED] does not describe any particular incidents of abuse that she witnessed. [REDACTED] states that between 2000 and 2002, he gave shelter to the petitioner on numerous occasions when Ms. [REDACTED] abused the petitioner.

The petitioner submitted no further evidence of Ms. [REDACTED] alleged abuse of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Although the petitioner states that he was treated at a hospital for a dislocated shoulder inflicted by Ms. [REDACTED] he does not submit medical records of his hospitalization. The petitioner explains why he did not pursue his order of protection or report Ms. [REDACTED] alleged abuse to the police, but he does not submit evidence that he ever sought assistance from, for example, religious figures or social service agency 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). The record also contains two significant inconsistencies. Ms. [REDACTED] states that the petitioner and Ms. [REDACTED] saw a psychologist to mediate disputes and Ms. [REDACTED] alleged abuse, but the record contains no corroboration from the psychologist and the petitioner himself does not discuss seeing a psychologist with Ms. [REDACTED]. Ms. [REDACTED] states that the petitioner spoke to the police at her insistence and Ms. [REDACTED] states that the police were involved in the petitioner’s domestic disputes, yet the petitioner himself states that he never notified the authorities of Ms. [REDACTED] alleged abuse and the record contains no police reports or other records. The petitioner does not explain these inconsistencies on appeal.

We concur with the director’s determination that the evidence submitted below does not establish the requisite battery or extreme cruelty and we do not repeat her discussion here. On appeal, counsel cites no errors of law or fact in the director’s decision and provides no further evidence of the petitioner’s eligibility. Accordingly, the present record fails to establish that Ms. [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.

*Entry into the Marriage in Good Faith*

As evidence of his good faith [REDACTED] Ms. [REDACTED] the petitioner initially submitted copies of two photographs of himself and Ms. [REDACTED] to lease renewals listing another individual as the tenant and lacking Ms. [REDACTED] signature; utilities bills addressed to Ms. [REDACTED] or the petitioner individually; a copy of the former couple’s 2000 federal income tax return amended on September 26, 2002 and indicating that they had originally filed as single; a letter jointly addressed to the petitioner and Ms. [REDACTED] dated the same month that the petitioner states they separated; and two joint bank account statements that show little usage of the account.

In response to the director's request for additional evidence, the petitioner submitted his own affidavits; Ms. [REDACTED] affidavit; evidence that the former couple opened their joint banking account on September 28, 2000 and that Ms. [REDACTED] withdrew money from the account on January 22, 2005, two months after the petitioner states that they separated. In his "Personal Statement of Abuse," the petitioner explains that a friend introduced him to Ms. [REDACTED] in 1997, that they dated until 1999 when Ms. [REDACTED] proposed to him, and that he accepted her proposal after consulting with friends and family. In his "Affidavit of Support," the petitioner states that he entered into marriage with Ms. [REDACTED] "in good faith to bear children of my own." The petitioner does not further discuss how he met [REDACTED] their courtship, wedding, or any of their shared experiences apart from Ms. [REDACTED]'s alleged abuse. We concur with the director's determination that the record does not establish the petitioner's good faith marriage to Ms. [REDACTED] and we do not repeat her discussion here. On appeal, counsel cites no errors of law or fact in the director's decision and provides no further evidence of the petitioner's good faith entry into marriage with Ms. [REDACTED]. Accordingly, the present record does not establish the petitioner's good faith marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The present record does not demonstrate the petitioner's good faith marriage to Ms. [REDACTED] or Ms. [REDACTED] battery or extreme cruelty and the petitioner is consequently ineligible for special immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Nevertheless, 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.