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U.S. Citizenship
and Immigration
Services

B9

FILE:

EAC 03 144 50986

Office: VERMONT SERVICE CENTER

Date: JUL 10 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:

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 that the petitioner's U.S. citizen wife battered or subjected him to extreme cruelty.

On appeal, counsel submits a brief and 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.

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 Syria who entered the United States on August 23, 1992 as a nonimmigrant student (F-1). The petitioner married [REDACTED] on September 9, 1990 in Chicago. The marriage ended in divorce on November 12, 1991. The petitioner alleged that [REDACTED] was guilty of extreme and repeated mental cruelty in the divorce proceedings. The petitioner wed [REDACTED] a United States citizen, on June 26, 1997 in Chicago. On September 4, 1997, Ms. [REDACTED] filed a Form I-130 petition on the petitioner's behalf. Action on the Form I-130 was terminated. This marriage ended in divorce on June 25, 1999. On March 2, 2001, the petitioner married [REDACTED] a U.S. citizen, in Illinois. On October 5, 2001, Ms. [REDACTED] filed a Form I-130 petition for alien relative on the petitioner's behalf, which she later withdrew and which was denied on April 4, 2003. On April 4, 2003, the petitioner was served with a Notice to Appear for removal proceedings charging him with remaining in the United States beyond the period of his authorized stay and failing to maintain or comply with the conditions of his nonimmigrant status in violation of sections 237(a)(1)(B) and 237(a)(1)(C)(i) of the Act. On June 9, 2004, the petitioner's marriage to [REDACTED] was legally terminated. The petitioner remains in removal proceedings at the Chicago Immigration Court and his next hearing is scheduled for September 28, 2006.

On April 5, 2003, the petitioner filed this Form I-360. On June 3, 2004, the director issued a notice requesting additional evidence that, *inter alia*, Ms. [REDACTED] battered or subjected him to extreme cruelty. On August 8, 2004, the petitioner submitted further evidence. On October 14, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty. The petitioner, through counsel, timely appealed.

On appeal, counsel contends that the director did not consider certain evidence and that his erroneous conclusion was based on faulty reasoning. We concur with the director's determination and find that counsel's claims on appeal do not overcome the ground 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).

Battery or Extreme Cruelty

As evidence of battery or extreme cruelty, the petitioner initially submitted a handwritten note from his psychologist [REDACTED] stating that the petitioner had been receiving counseling since July 20, 2002 "due to difficulties in his marriage." The petitioner also submitted a copy of his petition for dissolution of marriage against Ms. [REDACTED] which alleged that Ms. [REDACTED] was guilty of extreme and repeated mental cruelty towards him.

In response to the director's request for additional evidence, the petitioner submitted his own affidavit, a copy of the judgment for dissolution of his marriage to Ms. [REDACTED], a copy of a letter written by Ms. [REDACTED] requesting the closure of the former couple's safe deposit box, a psychological report on the petitioner written by [REDACTED], documentation of the police report and restraining orders filed by Ms. [REDACTED] against the petitioner, and affidavits from the petitioner's cousin and two friends.

In his affidavit, the petitioner states that Ms. [REDACTED] constantly berated, belittled, and screamed at him while throwing objects at him. The petitioner reports that Ms. [REDACTED] would scratch, bite and slap him; once hit him with a belt which left a welt for several days; once threw hot water on him; and once struck him in the chest with a large painting. The petitioner explains that he did not want to report Ms. [REDACTED] abuse because he was afraid of the "cultural backlash." The petitioner further states that Ms. [REDACTED] was very controlling, would frequently abuse him during arguments over finances, and threatened that he would be deported if he did not listen to her.

The petitioner reports that in March 2002, Ms. [REDACTED] falsely reported to the police that he had been violent towards her and that she took all of their belongings out of their safe deposit box and most of their marital property when she abandoned him in April 2002. The petitioner states that Ms. [REDACTED] filed a restraining order against the petitioner in New Jersey, which was dismissed. The petitioner reports feeling constant fear and suffering from severe depression as a result of Ms. [REDACTED]'s actions.

The record does not significantly corroborate the petitioner's statements. In the judgement for dissolution of the petitioner's marriage to Ms. [REDACTED] the court found that the breakdown of the marriage was due to irreconcilable differences and did not grant the dissolution on the ground of Ms. [REDACTED] alleged extreme and repeated mental cruelty. Moreover, the judgment states that both the petitioner and Ms. [REDACTED] alleged that the other party was abusive and the court found that "both parties have lied to the Court under oath and that both parties lack credibility."

Ms. [REDACTED] letter regarding the safe deposit box confirms that she took all the items from the box and requested its closure. The domestic relations court awarded the jewelry, allegedly in the safe deposit box, to the petitioner, but stated that Ms. [REDACTED] did not possess the jewelry. The petitioner also states that Ms. [REDACTED] took all of the money that they were given as wedding gifts from the safe deposit box. However, the dissolution judgment states, "On this issue the Court finds that both parties lack credibility and the Court is unable to determine what actually happened to the money. Therefore

the Court will leave the parties where they are.”

In his psychological assessment of the petitioner, [REDACTED] recounts the petitioner’s marital background, as related to him by the petitioner. [REDACTED] states that the petitioner’s abusive relationship with Ms. [REDACTED] “engendered acute depression, anxiety, and anger, as well as a severe loss of esteem and shattering of trust.” Dr. [REDACTED] concludes, “the intensity of the abuse mandates additional counseling at this point to aid [the petitioner] in coping with the extreme cruelty to which he was subjected.” Dr. [REDACTED] assessment is dated July 10, 2004 and is based on six clinical interviews with the petitioner between June 14 and July 7, 2004, after the director requested additional evidence. The record does not document [REDACTED] credentials.

The petitioner submitted a copy of the police report from March 5, 2002, which resulted in the petitioner’s arrest and charge with domestic violence against Ms. [REDACTED]. The related court record indicates that Ms. [REDACTED] did not appear in court and that the charge against the petitioner was stricken with leave to reinstate. The petitioner also submitted a copy of the domestic violence civil complaint and temporary restraining order which Ms. [REDACTED] obtained against the petitioner in New Jersey on June 6, 2002, but which was dismissed and vacated on August 30, 2002.

The affidavits of the petitioner’s cousin, [REDACTED], and his friends, [REDACTED] and [REDACTED] state that Ms. [REDACTED] engaged in “fits of fury, control and intimidation” and “would constantly argue with [the petitioner] in the presence of his family and friends. These arguments would often times become violent with his ex-wife throwing objects at [the petitioner] and injuring him.” Yet [REDACTED] and [REDACTED] do not describe any particular incidents of abuse that they witnessed. Moreover, their affidavits repeat four sentences verbatim regarding Ms. [REDACTED] alleged abuse and its effect on the petitioner. Such repetition indicates that the language is not the affiants’ own and further detracts from the probative value of their affidavits.

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 asserts that the director did not consider the petitioner’s affidavit, the affidavit of his cousin and friends and [REDACTED] assessment. Counsel misreads the director’s decision and the relevant regulation. On pages three and four of her decision, the director listed the claims made in the petitioner’s affidavit and [REDACTED] assessment and on page five of her decision, the director addressed the affidavits from the petitioner’s cousin and friends. Citing numerous inconsistencies in the record, the director explained why the petitioner’s testimony, [REDACTED] assessment and the supporting affidavits lacked credibility. Contrary to counsel’s assertion, the director considered and addressed these documents, but found the evidence to lack credibility. Hence, the director’s decision was made pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(i), which directs CIS to consider “any credible evidence relevant to the petition,” but states that “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.”

The present record does not demonstrate that Ms. [REDACTED] subjected the petitioner to battery or

extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii) 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