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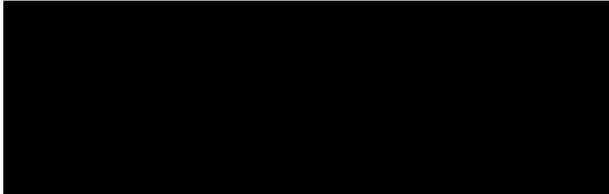
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 05 163 53116

Office: VERMONT SERVICE CENTER

Date: JUL 13 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 petitioner failed to establish that his wife battered or subjected him to extreme cruelty during their marriage.

On appeal, the petitioner submits a letter 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).

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 Chile who entered the United States on July 13, 1990 as a nonimmigrant student. On April 4, 2000, the petitioner married [REDACTED] a U.S. citizen, in Florida. On July 13, 2005, their marriage was dissolved by the Circuit Court of Dade County, Florida. The petitioner filed this Form I-360 on May 16, 2005. On August 15, 2005, the director issued a notice requesting the petitioner to submit additional evidence that, *inter alia*, Ms. [REDACTED] battered or subjected him to extreme cruelty during their marriage. The petitioner submitted additional evidence on September 12, 2005. On October 5, 2005, the director denied the petition because the record did not establish the requisite battery or extreme cruelty. 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 issue on appeal is whether the petitioner has demonstrated the requisite battery or extreme cruelty. On appeal the petitioner reiterates his claim that Ms. [REDACTED] abused him. We concur with the director's conclusion and find that the petitioner's statements on appeal do not overcome the ground for denial. 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 a letter from his former psychologist, Dr. [REDACTED], and two supporting affidavits. Dr. [REDACTED] states that she treated the petitioner for major depression disorder beginning in July 2004 and that he was first seen on a weekly basis due to "an abusive divorce since his wife abandoned their home." Dr. [REDACTED] indicates that sometime after December 2004 and prior to April 25, 2005, the petitioner "integrated himself back to his normal routine" and his case was closed. Dr. [REDACTED] offers no substantive analysis of the petitioner's condition and does not indicate that the "abusive divorce" and Ms. [REDACTED] abandonment encompassed Ms. [REDACTED] battery or extreme cruelty. The affidavits of [REDACTED] and [REDACTED] Tarr are prepared forms with blanks that have been filled in by the affiants. Mr. [REDACTED] and Ms. [REDACTED] both state, "I am a witness to the physical and verbal abuse to which [Ms. [REDACTED] subjected [the petitioner] to." Neither Mr. [REDACTED] nor Ms. [REDACTED] describes any specific incidents of abuse which they witnessed and their statements are of little probative value.

In response to the director's request for additional evidence, the petitioner submitted his affidavit, a copy of his Petition for Injunction for Protection Against Domestic Violence from Ms. [REDACTED], a letter from Mr. [REDACTED], a form affidavit by [REDACTED] and a letter from his counselor, [REDACTED]. In his September 1, 2005 affidavit, the petitioner states that Ms. [REDACTED] did not support his efforts to further his education and told him he could not work part-time because they needed the money. The petitioner reports that Ms. [REDACTED] did not call him for a week when she was on a business trip and that when she returned she was distant and no longer wanted to spend time with him or his family. The petitioner states that in June 2004, Ms. [REDACTED] told him that she did not want to have children with him and that she wanted a divorce.

According to the petitioner, Ms. [REDACTED] then made the petitioner sleep on the floor, threatened to have him deported if he did not sign a quit claim deed to their house and that she cashed the former couple's \$5,000 savings bond. The petitioner reports that Ms. [REDACTED] would insult him, push him around and once pushed him down the stairs. The petitioner states that Ms. [REDACTED] pawned her wedding ring, withdrew almost all of the money from their joint bank account, made him pay the mortgage on their house, removed him from their automobile insurance policy, and told him that she had burned their wedding pictures. The petitioner states that on July 15, 2004 the police came to the former couple's home with a restraining order that Ms. [REDACTED] had obtained against the petitioner and forced him to leave. The petitioner explains that his lawyer convinced him to retract his own protection petition against Ms. [REDACTED] to avoid delaying the divorce and the sale of the former couple's house.

The remaining relevant evidence submitted with the petitioner's September 12, 2005 response does not fully corroborate the petitioner's statements or establish that Ms. [REDACTED] battered or subjected the petitioner to extreme cruelty. The protection petition filed by the petitioner against Ms. [REDACTED] on July 16, 2004 states that Ms. [REDACTED] was granted a temporary Injunction for Protection against the petitioner on July 13, 2004. The petitioner also submitted a copy of the court's order to dismiss his petition "based on the Petitioner's testimony that he/she has not been threatened, intimidated, or harassed in any

way.” In his letter dated September 2, 2005, Mr. [REDACTED] states that he often visited the former couple and noticed that Ms. [REDACTED] was very cold, distant and verbally abusive towards the petitioner. He reports that one evening when he was visiting the petitioner, Ms. [REDACTED] began yelling obscenities at the petitioner and humiliating him in front of Mr. [REDACTED]. Mr. [REDACTED] states that the police arrived and served the petitioner with a restraining order that Ms. [REDACTED] had obtained based on “a false accusation of domestic abuse.” Yet the record contains no evidence that the court later dismissed Ms. [REDACTED] July 16, 2004 temporary protection injunction against the petitioner.

Ms. [REDACTED] affidavit is a preprinted form with blanks that have been filled in by Ms. [REDACTED]. Although she states that she witnessed the “mental/emotional abuse” to which Ms. [REDACTED] subjected the petitioner, Ms. [REDACTED] does not describe in detail any specific incidents of abuse that she witnessed. Consequently, her testimony is of little probative value. In her letter dated August 31, 2005, Ms. [REDACTED] explains that she has been treating the petitioner for major depressive disorder since July 2005. Ms. [REDACTED] states, “According to [the petitioner], this is not the first time he receives [sic] psychological treatment since in his own words ‘the sudden, abrupt and unfair end of my marriage.’” Ms. [REDACTED] describes the petitioner’s symptoms but offers no substantive analysis of the petitioner’s condition and does not indicate that the petitioner’s condition is consistent with having survived domestic violence.

On appeal, the petitioner submits a letter in which he reiterates his claims of abuse and his explanation of why his petition for protection against Ms. [REDACTED] was dismissed. The petitioner’s statements do not overcome the director’s ground for denial and 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).

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.