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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 14 2006

EAC 04 267 52687

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien subjected to battery or extreme cruelty by his United States citizen spouse.

The director denied the petition, finding that the petitioner failed to establish that he had been battered or subjected to extreme cruelty by his U.S. citizen spouse. The director further denied the petition, finding that the petitioner had failed to establish that he is a person of good moral character.

On appeal, counsel submits additional evidence.

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 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 ct 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The petitioner is a native and citizen of Bangladesh who last entered the United States on May 8, 1994 as a B-2 nonimmigrant visitor. On March 21, 2002, the petitioner was selected for registration in the fiscal year 2003 Diversity Visa Program. On December 4, 2002, he filed a Form I-485 application to register **permanent residence or adjust status on the basis of the visa lottery program**. The petitioner married [REDACTED] a United States citizen, on February 1, 2003 in Las Vegas, Nevada. Ms. [REDACTED] filed a Form I-130 petition for alien relative on the petitioner's behalf on February 11, 2003. The petitioner filed a Form I-485 application concurrently with the Form I-130 petition. On May 6, 2003, Ms. [REDACTED] informed CIS that she wished to withdraw the Form I-130. On December 22, 2003, the district director denied the Form I-130 petition and the concurrently filed Form I-485. On December 23, 2003, the director denied the petitioner's diversity visa related Form I-485 application.

The petitioner's marriage to Ms. [REDACTED] ended in divorce on April 17, 2004. On September 24, 2004, the petitioner filed his Form I-360. On July 11, 2005, the director issued a notice informing the petitioner that

inadequate because it was based upon a name search using only two of his three aliases.¹ The petitioner provides no explanation for his failure to submit evidence of his good moral character at the time of filing or when requested to do so by the director in his request for evidence. In cases where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO does not usually accept evidence offered for the first time on appeal. If the petitioner has wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. (BIA 1988). In this instance, however, because the petitioner was not provided with the notice of intent to deny as required by regulation, we reviewed the petitioner's appellate submission in order to determine whether such evidence overcomes the director's stated grounds for denial and could be sustained without remanding to the director for further action. However, we find that the petitioner has failed to establish that he is a person of good moral character because he has failed to provide CIS with a complete criminal history.

Battery or Extreme Cruelty

The next issue to be addressed is whether the petitioner established that his wife subjected him to battery or extreme cruelty. The evidence relating to abuse consists of the following:

- The petitioner's statement dated September 16, 2004.
- A psychological evaluation dated December 30, 2003, performed by [REDACTED] and [REDACTED]
- An affidavit of [REDACTED], a friend of the petitioner.

The petitioner submitted a psychological evaluation written by [REDACTED] and [REDACTED] licensed clinical social workers. The evaluation states that the petitioner was diagnosed with posttraumatic stress disorder " based on having been exposed to a traumatic event." The evaluation was prepared on the basis of four sessions with the petitioner and several follow up phone calls.

The petitioner submitted numerous affidavits from friends, which indicate that the petitioner appeared to be depressed after his marriage failed. Only one of the affiants claimed to have observed the alleged abuse in person, [REDACTED] who indicated that he observed the petitioner's wife "having a very weird temper tantrum."

The petitioner complained that his wife was verbally abusive and would call him a terrorist in public to embarrass him. He said that she rejected his advances by pushing him away and slapping him. He said that once, she threw a pen at close range, just missing his face. He said that he sometimes felt obliged

¹ [REDACTED], [REDACTED], and [REDACTED]

to have sex with his wife. He said that once when he tried to kiss her goodnight, she pushed him away so hard that his head hit the wall next to the bed. The petitioner claims that his wife made a false claim of sexual assault to the police department, and by doing so, subjected him to extreme cruelty.

The evidence on the record does not establish that Ms. Ross subjected the petitioner to battery or extreme cruelty pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi), 204.2(c)(2)(iv). The fact that the petitioner relayed the incidents described above to two social workers long after the fact does not corroborate his claim that his wife ever used or threatened to use force against the petitioner. Ms. [REDACTED] behavior was not part of an overall pattern of violence and did not amount to psychological abuse. He established that she made such a report to the police, but a court of law has not made a determination as to the falsity of the claim. In addition, the petitioner submitted no evidence that he ever sought assistance from the police, religious figures, social workers or other social service agency personnel to help him deal with his wife's alleged extreme cruelty. Mr. [REDACTED] and Ms. [REDACTED] evaluation provided to counsel in support of this petition do not indicate that the petitioner sought or received any mental health treatment from either evaluator. The petitioner submitted no statement below or on appeal to explain why he did not seek assistance, or that he did seek help, but that evidence of such help (or his attempts to get help) does not exist or is unobtainable. On appeal, the petitioner submitted evidence that his wife filed sexual assault charges against him with the Las Vegas Metro Police Department and that the police did not present the complaint to the district attorney for prosecution. The petitioner failed to establish that his wife's allegations were false. He failed to establish that filing charges constitutes abuse, especially since they were dropped. Accordingly, the present record does not demonstrate that the petitioner was subjected to battery or extreme cruelty by Ms. [REDACTED] as required by section 204(a)(1)(A)(iii) of the Act.

The petitioner has not established that he was battered or subjected to extreme cruelty by his United States citizen spouse. Based on the current record, the petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which 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.

Consequently, the case must 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.