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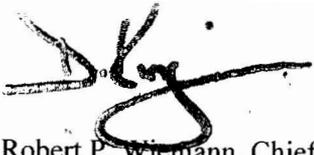
IN RE: Petitioner: [Redacted]

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 because the record failed to establish that the petitioner resided with his U.S. citizen wife, that she battered or subjected him to extreme cruelty, or that he entered into their marriage in good faith.

On appeal, counsel submits a letter and 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

* * *

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 Brazil who entered the United States on September 27, 2002 as a nonimmigrant visitor (B-2). On July 21, 2004, the petitioner married [REDACTED] a

U.S. citizen, in Rhode Island. On April 7, 2005, the petitioner filed this Form I-360. On August 8, 2005, the director requested additional evidence of, *inter alia*, the petitioner's residence with Ms. [REDACTED] his good faith marriage to Ms. [REDACTED] and her battery or extreme cruelty. The petitioner submitted further evidence on October 3, 2005. On November 14, 2005, the director denied the petition because the record failed to establish the requisite joint residency, good faith marriage and battery or extreme cruelty. The petitioner timely appealed.

On appeal, the petitioner submits an unsigned affidavit from his friend [REDACTED] and a letter and progress reports from his counselor, [REDACTED]. We concur with the director's determinations and find that the evidence submitted on appeal does not overcome the grounds 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).

Joint Residence

On his Form I-360, the petitioner states that he resided with Ms. [REDACTED] from November 2003 to February 2005. The petitioner initially submitted the following evidence relevant to his alleged residence with Ms. [REDACTED]

- His affidavit in which he states that the petitioner and her son lived with him in his apartment at [REDACTED] in Pawtucket, Rhode Island in November 2003 until February 20, 2005 when Ms. [REDACTED] left;
- A rental agreement dated November 1, 2003 between [REDACTED] lessor and the petitioner and Ms. [REDACTED] the lessees, for the [REDACTED] residence, which is dated November 1, 2003, set to commence on July 1, 2004, but which is not signed by Ms. [REDACTED] and which does not list any children as intended residents;
- A copy of Ms. [REDACTED] 2004 W-2 statement listing her address as [REDACTED] in New Haven, Connecticut; and
- A copy of Ms. [REDACTED] 2003 income tax return and correspondence from her tax preparer dated July 27, 2004, all of which list [REDACTED] in New Haven, Connecticut as Ms. [REDACTED] address.

In response to the director's request for additional evidence, the petitioner submitted:

- A letter from [REDACTED] who states that he was the landlord of the petitioner, Ms. [REDACTED] and her son when they lived together at the [REDACTED] address from November 2003 to February 2005;
- Ms. [REDACTED] affidavit dated September 22, 2005, in which she states that she and her son

lived with the petitioner at the [REDACTED] address from November 2003 to February 2005, but that during that time she continued to work two days a week in New Haven, Connecticut;

- A letter from [REDACTED] who states that he was a neighbor and friend of the petitioner when the petitioner and his family lived at [REDACTED] in Pawtucket, Rhode Island, that he had barbeques with the petitioner and Ms. [REDACTED] and that they were excellent neighbors; and
- A blank check for a joint Citizens Bank Connecticut account of Ms. [REDACTED] and the petitioner listing their address as [REDACTED] in New Haven, Connecticut.

We concur with the director's determination that the evidence submitted below does not establish the petitioner's residence with Ms. [REDACTED] due to numerous unresolved discrepancies between the petitioner's claim that he resided with Ms. [REDACTED] in Rhode Island from November 2003 to February 2005 and documents indicating that Ms. [REDACTED] resided in Connecticut in 2004. On appeal, the petitioner submits no further evidence relevant to this issue. The present record thus fails to establish that the petitioner resided with Ms. [REDACTED] as required by section 204(a)(1)(A)(iii)(II)(dd).

Good Faith Entry into the Marriage

In his affidavit, the petitioner states that he met Ms. [REDACTED] in May 2003, that they had a lot of things in common, that he fell in love and that after six months Ms. [REDACTED] and her son moved in with him. The petitioner further states that they had a "nice and simple" wedding ceremony on July 21, 2004; that they had a "perfect and loving relationship;" that they went to church together and saw an attorney to start the petitioner's immigration documentation.

In response to the director's request for additional evidence, the petitioner submitted the following evidence:

- Ms. [REDACTED] affidavit in which she states that the former couple got married because they loved each other, that their marriage was entered into in good faith and not for immigration purposes, that the former couple lived together from November 2003 to February 2005, when she moved out because the marriage "became incompatible;"
- Mr. [REDACTED] letter in which he indicates that he interacted with the petitioner and Ms. [REDACTED] as a family;
- A Citizens Bank Account Services Summary dated December 15, 2004 indicating that the petitioner and Ms. [REDACTED] opened a joint checking account on that date, but shows no usage of the account by the petitioner or Ms. [REDACTED]
- The aforementioned blank check for the joint account which lists a New Haven, Connecticut address for the former couple; and

- Photocopies of photographs of the petitioner and Ms. [REDACTED] which appear to have been taken on the same day.

We concur with the director's determination that the evidence submitted below contains numerous discrepancies and does not establish the petitioner's good faith marriage to Ms. [REDACTED]. We do not repeat the director's discussion here.

The affidavit attributed to Ms. [REDACTED] that was submitted on appeal states that Ms. [REDACTED] witnessed the petitioner's marriage to Ms. [REDACTED] was a close friend of the former couple during their marriage and that she observed that their relationship was loving and caring. The affidavit is unsigned and provides no further details about the petitioner's alleged good faith in marrying Ms. [REDACTED]. The petitioner submitted no other evidence of joint assets or liabilities or documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). 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 present record does not demonstrate that the petitioner entered into marriage with Ms. [REDACTED] good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

As evidence of Ms. [REDACTED] alleged extreme cruelty, the petitioner initially submitted his affidavit and a report from his counselor, Ms. [REDACTED]. The petitioner states that one evening he came home early and found Ms. [REDACTED] drinking with her former boyfriend. He reports that Ms. [REDACTED] yelled at him to leave the house, insulted him and that she and her former boyfriend started humiliating him. The petitioner states that Ms. [REDACTED] told him that she would file his immigration papers if he gave her enough money to live with her former boyfriend and her son and that she threatened to report him to the authorities for illegally staying and working in the United States. The petitioner states that his neighbors helped him and invited him to stay at their house. The petitioner further reports that after Ms. [REDACTED] left their home, she continued to call him asking for money and threatening that she and her boyfriend would hurt him if he does not comply with their demands.

In her April 1, 2005 report, Ms. [REDACTED] states that the petitioner reported symptoms consistent with the criteria for a diagnosis of Major Depression with Melancholic Features and Anxiety Disorder. Ms. [REDACTED] concludes that the petitioner's symptoms are "related to a major loss in his life and trauma inflicted by the abusive relationship with his wife and the current threats of physical harm."

In response to the director's request for additional evidence, the petitioner submitted another report from Ms. [REDACTED] dated September 27, 2005 in which she concludes that the petitioner is "experiencing Anxiety and Depression due to his current marital problems in addition to PTSD (Post Traumatic Stress Symptoms [sic] as evidenced by his frequent nightmares, Weight Loss [sic], difficulty concentrating

and making simple decisions.” The petitioner also submitted a letter dated September 22, 2005 from [REDACTED] who states that he has been giving the petitioner spiritual advice “because of his marriage problems.”

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, the petitioner submits a letter dated December 8, 2005 from Ms. [REDACTED] in which she explains that her reports submitted below contained several grammatical errors. The petitioner also submits three progress reports written by Ms. [REDACTED] dated May 14, June 18 and November 19, 2005. In her May 14, 2005 report, Ms. [REDACTED] states that the petitioner “continues to present with depressive symptoms” and is “starting to talk about his views and his feelings regarding the major stressor in his life at his [sic] time, the end of his marriage.” In her June 18, 2005 report, Ms. [REDACTED] notes that the petitioner was anxious due to problems at work and that he “also mentioned feelings of loneliness and loss over his estranged wife and her young son whom he misses very much.” In her November 19, 2005 report, Ms. [REDACTED] states that the petitioner told her he joined a support group at his church which has helped him with his fears of being harmed by his estranged wife’s boyfriend and that he fears women will find him weak because his estranged wife left him.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) to support his claims. The petitioner states that a neighbor assisted him on the night he discovered his wife at home with her boyfriend, but he does not submit a statement from that neighbor even though the director specifically requested the neighbor’s statement. 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). As noted by the director, the fact that Ms. [REDACTED] provided a letter in support of his petition contradicts the petitioner’s claim that she subjected and continues to subject him to extreme cruelty. The evidence submitted on appeal indicates that the petitioner received spiritual and psychological counseling related to his marital problems, but the evidence does not independently 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.

The present record does not demonstrate that the petitioner resided with Ms. [REDACTED] that he married her in good faith or that she subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification under 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 review.