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U.S. Citizenship
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[Redacted]

FILE: [Redacted]
EAC 04 255 52892

Office: VERMONT SERVICE CENTER

Date: JUN 23 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

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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 The decision of the director will be withdrawn and the petition will be remanded for further action.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, counsel submits a brief.

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 Ghana who entered the United States on August 29, 1998 as a nonimmigrant visitor (B-2). On September 16, 2002, the petitioner married [REDACTED] a U.S. citizen, in New York City. On August 25, 2004, Citizenship and Immigration Services (CIS) denied the Form I-130 petition for alien relative filed by Ms. [REDACTED] on the petitioner's behalf as well as the petitioner's concurrently filed Form I-485 application to adjust status. On September 9, 2004, the petitioner filed this Form I-360. On March 17, 2005, the director issued a notice requesting additional evidence of battery or extreme cruelty. In response, the petitioner submitted a psychological assessment on April 29, 2005. On October 3, 2005, the director denied the petition because the record did not establish that Ms. [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage. The petitioner, through counsel, timely appealed.

On appeal, counsel claims that Ms. [REDACTED] subjected the petitioner to extreme cruelty and that the psychological assessment of the petitioner should be given more weight. We concur with the director's determination and find that counsel's assertions on appeal do not overcome the grounds for denial. Nonetheless, the case will be remanded because the director denied the petition without first issuing 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.

Battery or Extreme Cruelty

As evidence of battery or extreme cruelty, the petitioner initially submitted his own affidavit and affidavits from his friend and brother. In his affidavit, the petitioner states that on Valentine's Day in

2004, Ms. [REDACTED] suddenly accused the petitioner of marrying her for a "green card," splashed water in his face and threw out his food. The petitioner reports that Ms. [REDACTED] consistently asked him for money and when he questioned her, she insulted him and threatened to send him back to Ghana. In the summer of 2004, the petitioner states that he cancelled the couple's debit cards when he noticed an unusual amount of purchases and Ms. [REDACTED] denied making them. However, the petitioner states that Ms. [REDACTED] continued to use the canceled card, resulting in a canceled transaction and police intervention. After this incident, the petitioner reports that Ms. [REDACTED] cursed him and threatened not to attend his adjustment of status interview. The petitioner reports feeling extremely depressed.

[REDACTED], the petitioner's friend, states that Ms. [REDACTED] called her to complain about the petitioner because he did not spend enough money on her. [REDACTED] the petitioner's brother, states that when he tried to advise Ms. [REDACTED], she cursed him.

In response to the director's request for additional evidence, the petitioner submitted a psychological assessment conducted by Dr. [REDACTED]. Dr. [REDACTED] states that she met with the petitioner on 3/5/05 for an unspecified amount of time. Dr. [REDACTED] describes the petitioner's marital problems as related by the petitioner and diagnoses the petitioner with major depressive disorder of moderate severity. Dr. [REDACTED] does not describe Ms. [REDACTED] behavior as abusive and does not state that the petitioner exhibited signs or behavior consistent with being subjected to domestic violence. Dr. [REDACTED] indicates that the petitioner's depression is related to the breakdown of his marriage, rather than Ms. [REDACTED] alleged extreme cruelty.

The present record does not establish that Ms. [REDACTED] battered or subjected the petitioner to extreme cruelty, as that term is described in the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi). The petitioner does not state that Ms. [REDACTED] ever threatened the petitioner with violence and her nonviolent behavior is not described as part of an overall pattern of violence. The evidence does not establish that Ms. [REDACTED] mistreatment of the petitioner rose to the level of psychological abuse. Dr. [REDACTED] assessment shows that the petitioner suffered from depression related to Ms. Simpson's behavior and the breakdown of his marriage, but her letter does not establish that Ms. [REDACTED] subjected the petitioner to battery or extreme cruelty. The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). 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).

Accordingly, the present record does not demonstrate that Ms. [REDACTED] subjected the petitioner to battery or extreme cruelty and the petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. However, the case will be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), 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.