

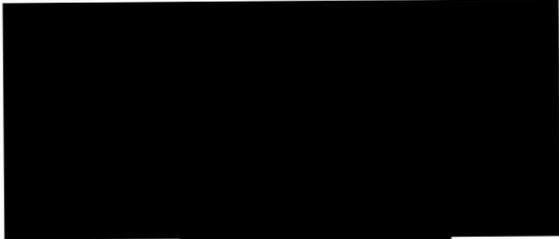


U.S. Citizenship  
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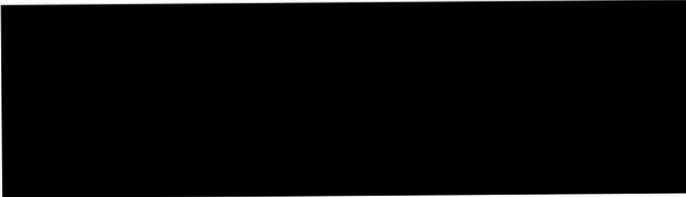
Office: VERMONT SERVICE CENTER

Date: MAR 10 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:



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, Director  
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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of India who 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 because the record did not establish that the petitioner was battered by or subjected to extreme cruelty by his U.S. citizen spouse during their marriage. On appeal, counsel resubmits copies of documents submitted below and claims the director did not give sufficient weight to the evidence. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty and find that counsel's claims on appeal do not overcome this basis for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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) further explicates the statutory requirements and 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 record in this case shows that the petitioner entered the United States on September 10, 2002, as a K-1 nonimmigrant fiancé of a United States citizen. The petitioner married [REDACTED] a United States citizen, on September 20, 2002 in Maryland. On February 17, 2004, the petitioner filed the instant petition. As evidence that he was battered or subjected to extreme cruelty by his wife, the petitioner initially submitted only his own affidavit. On April 7, 2004, the petitioner was placed into removal proceedings.<sup>1</sup> Finding the petitioner's affidavit alone insufficient to establish his eligibility, the director issued a notice on September 23, 2004 requesting additional evidence that the petitioner had been battered or subjected to extreme cruelty by his wife. Pages one and two of the director's notice listed the specific types of documents the petitioner should submit as well as a detailed description of the specific aspects of abuse that should be covered by any testimonial evidence to establish extreme cruelty. In response, the petitioner submitted an assessment summary written by a mental health counselor, a handwritten note from a psychiatrist verifying the petitioner's visit and upcoming appointment, a letter affirming the petitioner's withdrawal from a dental board review program, a letter from the [REDACTED] and affidavits from the petitioner's parents, brother, uncle, cousin and a family friend.

In his affidavit, the petitioner states that on or about October 25, 2002, the petitioner and his wife got into an argument and she left him on the side of the highway. The petitioner states that he called his brother who picked him up and that his wife picked him up the next day, but made him wait for hours at a fast food restaurant. The petitioner states that his wife did not tell him about her family situation before they were married and describes many problems in their marriage involving his wife's parents. The petitioner states that the couple lived with his wife's parents and had no privacy. He states that he could use only one bathroom in the house, could take showers for only three minutes, and that his mother-in-law often would not turn on the heat during the day. The petitioner states that eventually he was not allowed to eat in the house. The petitioner reports that his wife constantly threatened him that if he spoke ill of her parents, she would end their marriage.

The petitioner states that despite her earlier promise to support his studies, his wife refused to pay for a class for the petitioner to study for his dental licensing examination. He reports that his wife and her mother forced him to take menial jobs to earn a living. The petitioner explains that his wife constantly put him down, did not respect him and acted as though they were not married. The petitioner states that he and his wife had no friends and never went out and that his wife did not want him to get a driver's license.

The petitioner states that he and his wife eventually moved into their own apartment. The petitioner states that

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<sup>1</sup> An immigration judge granted the petitioner voluntary departure on June 30, 2005.

on or about December 2, 2002, his wife came home very late and began yelling at him and told him he was not man enough for her. The petitioner states that his wife then ran out screaming that she would smash the car and that when he tried to stop her from driving away, she backed the car into him and bruised his leg. The petitioner states that he did not call the police because he was determined to make his marriage work. According to the petitioner, his wife later returned, but refused to sleep with the petitioner and eventually stopped coming home. The petitioner states that he lost his job, had no money to pay the rent and was then thrown out of their apartment on December 20, 2002. The petitioner explains that he went to his mother-in-law's house, but his wife refused to let him in and made him sleep in her car. The petitioner reports that he called his brother the next day to pick him up and then stayed with his parents. He states that he became very sick from sleeping in his wife's cold car, lost a lot of weight, was unable to sleep and became depressed.

The affidavits of the petitioner's relatives and friend provide little, independent testimony of the petitioner's claims because they largely discuss events in the petitioner's marriage as told to them by the petitioner. Accordingly, we only address their statements regarding incidents that they personally witnessed. [REDACTED] the petitioner's cousin, states that when he spoke to the petitioner after the petitioner's marriage, he was upset and sounded depressed. [REDACTED] states that he saw the petitioner when the petitioner returned to New Jersey on December 21, 2002 and that the petitioner had lost a lot of weight and was in frail physical condition.

[REDACTED] the petitioner's older brother, confirms that he picked up the petitioner one night in late October 2002 after the petitioner's wife had left him on the side of the highway. [REDACTED] confirms that the petitioner called him again in December 2002 on the night the petitioner's wife backed her car into the petitioner and bruised his leg. [REDACTED] states that the petitioner said, "she is coming to hit me" and that he then heard the telephone drop to the floor. [REDACTED] further states that when he picked up the petitioner after he was evicted from their apartment and spent the night in his wife's car, the petitioner was fatigued, disheveled and improperly clothed. [REDACTED] states that in the following days, the petitioner would not eat, sleep, go out of the house, or take care of himself and that the petitioner did not want to speak to anyone and just lay in bed.

[REDACTED] states that he then drove the petitioner back to Maryland to see his wife and that the couple was speaking in the car when the petitioner's father-in-law pulled the petitioner's wife out of the car and told the petitioner and his brother to leave, threatening to get them arrested on false allegations if they did not. [REDACTED] further states that as a result of his wife's mistreatment, the petitioner has lost his self-respect and confidence and attempted to commit suicide on two occasions.

[REDACTED] family friend of the petitioner, states that he has met with the petitioner and his parents several times to give them moral support and that he has never seen the petitioner smile since the breakdown of the petitioner's marriage. [REDACTED] the petitioner's uncle, also discusses the petitioner's troubled marriage, but does not indicate that he personally witnessed the petitioner being abused by his wife or directly observed the effects of the alleged abuse on the petitioner.

The petitioner's parents state that when the petitioner visited them shortly after his marriage, he was quiet, reserved and sad, in contrast to his usually active and talkative behavior. They explain that when the petitioner visited them again in October 2002, he looked tired and frail, in contrast to his usually healthy appearance, and that the petitioner began crying when they asked him what was the matter and said that things were not the way he expected them to be. When the petitioner arrived to stay with them again in December 2002, his parents report that he was shivering, had a fever, had lost weight, was unshaven, had black circles around his eyes and spoke in a voice so low they could barely hear him. His parents state that over the next few days, the petitioner

had to be forced to eat, did not want to shave or shower, was fearful, could not sleep at night and just lay in bed.

The petitioner's parents further report that in April 2003, the petitioner became upset while driving back from his brother's wedding ceremony and suddenly tried to drive the car into an electric pole, but that his brother pulled the hand brake and pulled out the key. The petitioner's parents state that they took him to a doctor who sedated him. The petitioner's parents state that the petitioner's depression lasted for months. On one occasion, they state that the petitioner ran into the kitchen and took a knife and tried to hurt himself, but that his father grabbed the knife. The petitioner's parents state that the petitioner did not obtain medical help for his depression. The petitioner does not discuss either of these incidents in his own affidavit.

The letter from the [REDACTED] states that the petitioner sought counseling at the Asharam on several occasions because he was emotionally and mentally disturbed by his wife's emotional and physical abuse. The letter does not describe the alleged abuse in any detail or discuss the petitioner's physical health or emotional affect as observed during his counseling sessions. A letter from Kaplan Medical confirms that the petitioner's brother enrolled him in [REDACTED] Medical's Dental Board Review Program, but that the petitioner could not continue his enrollment because of his severe depression and lack of focus due to his marital problems. The letter does not state that any Kaplan staff members directly observed the petitioner's lack of focus or any other symptoms of depression, or that the petitioner himself, rather than his brother, discussed his marital difficulties with any Kaplan employees.

In her assessment summary of the petitioner's condition dated January 17, 2005, [REDACTED] states that the petitioner "presented as depressed with marked speech difficulties, he was emotional and came close to tears when relating the events that led to his current separation." Ms. [REDACTED] states that the petitioner had no suicidal ideation or plan at the time of the assessment. She recommends that the petitioner obtain brief supportive therapy and refers the petitioner for a psychiatric evaluation with a Dr. [REDACTED]. Ms. [REDACTED] states the following diagnostic impression of the petitioner: "Axis I[: ] 309.0 Adjustment Disorder With Depressed Mood R/O Post Traumatic Stress Disorder R/O Major Depressive Disorder. Axis II[: ] Deferred. Axis III[: ] Deferred. Axis IV[: ] Problems related to spousal abuse and end of marriage. Axis V[: ] 60." The record also contains a copy of a handwritten note from Dr. [REDACTED] which confirms that he saw the petitioner on January 22, 2005, and a card noting an appointment with Dr. [REDACTED] scheduled on January 29, 2005. The petitioner submitted no further records or description of his condition from Dr. [REDACTED].

These documents confirm that the petitioner sought mental health treatment over two years after the breakdown of his marriage, but they do not establish that the petitioner's wife battered or subjected him to extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Although Ms. [REDACTED] states that the petitioner was abused by his wife, she cites no clinical or scholarly basis for that conclusion. The record also does not indicate that Ms. [REDACTED] has any experience or training in diagnosing and treating survivors of domestic violence. In addition, Ms. [REDACTED] met with the petitioner over two years after he was separated from his wife and her assessment largely describes the petitioner's marital history as related to her by the petitioner himself. The brief notation from Dr. [REDACTED] provides no details about the petitioner's visit and does not state that the petitioner has a mental health condition related to his wife's alleged abuse. Consequently, these documents are of little probative value.

The submitted affidavits also do not establish that the behavior of the petitioner's wife rose to the level of battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The record contains no corroborative documentation that the petitioner was battered by his wife. The petitioner states that

his wife and mother-in-law forced him to take menial jobs, but he does not state that his wife or his mother-in-law used or threatened to use violence against him if he did not do so. The petitioner states that he was not allowed to eat in his wife's family's house, but he does not further explain how he was prevented from eating or state that his wife or her parents forcibly prevented him from eating or threatened to harm him if he ate in their house. The petitioner states that his wife kept him in the house, yet he does not state that she forcibly detained him or threatened to harm him if he left the house. Indeed, the record indicates that the petitioner was employed outside of the home during part of his marriage. The petitioner relates incidents where his wife rejected his intimacy and abandoned him, but the record does not persuasively establish that these incidents were part of an overall pattern of physical violence or amounted to psychological or sexual abuse.

The petitioner credibly explains that he did not call the police to report his wife's behavior because he was committed to making his marriage work. Yet the petitioner submitted little other documentation of his wife's alleged battery or extreme cruelty of the types described in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The petitioner submitted no evidence that he sought medical or mental health treatment for the effects of his wife's alleged abuse prior to the breakdown of their marriage. The petitioner's visits to Ms. [REDACTED] and Dr. [REDACTED] occurred two years after his separation from his wife. While the petitioner's parents opine that he refused medical care due to shame and the social stigma associated with mental illness, the petitioner himself does not explain why he did not seek treatment for his depression until two years after he was separated from his wife and only after the director requested additional evidence to establish battery or extreme cruelty. The letter from th [REDACTED] provides no probative details about the petitioner's spiritual counseling and does not state the dates that the petitioner was counseled at the [REDACTED]. The petitioner's parents state that they took the petitioner to a doctor after the petitioner attempted suicide after his brother's wedding ceremony, but the record contains no documentation of that medical treatment. Consequently, the record does not establish that the petitioner's reported depression and other symptoms were caused by his wife's battery or extreme cruelty, rather than by her mistreatment, the breakdown of the petitioner's marriage and other associated stressors in the petitioner's life.

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.

The director denied the petition without first issuing a NOID. 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.