

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

B9

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]
EAC 04 016 53309

Office: VERMONT SERVICE CENTER

Date:

MAY 11 2006

IN RE:

Petitioner:

[REDACTED]

PETITION:

Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.

Maiperson

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of Ethiopia who wed [REDACTED] a lawful permanent resident of the United States, on July 11, 1996 in Ethiopia. On May 30, 1997, [REDACTED] filed a Form I-130 on the petitioner's behalf. She withdrew the petition on January 11, 2002.

On October 20, 2003, the petitioner filed a Form I-360 seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien subjected to battery or extreme cruelty by his lawful permanent resident spouse. The director denied the petition, finding that the petitioner had failed to establish that he had been battered by or subjected to extreme cruelty by his lawful permanent resident spouse during their marriage and that he entered into the marriage in good faith. On appeal, counsel submits a brief, which outlines the evidence in the record. 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 good faith marriage. We 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)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he entered into the marriage with the lawful permanent resident 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 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.

* * *

(vii) *Good faith marriage.* Evidence of good faith marriage 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 first issue to be addressed in this proceeding is whether the petitioner established that he has been battered by, or subjected to extreme cruelty perpetrated by, his lawful permanent resident spouse. Finding the initial evidence insufficient, on August 18, 2004, the director asked the petitioner to submit additional evidence to establish abuse. The director gave the petitioner examples of the types of evidence that might establish the requisite abuse. In response to the request, the petitioner submitted his own statement dated September 21, 2004; an affidavit of a friend of the petitioner; and a protective order that the petitioner's wife obtained to restrain the petitioner.

On appeal, counsel listed the petitioner's claims and categorized them as examples of verbal abuse, social isolation, possessiveness, physical abuse, and effects of abuse on quality of life.

The evidence relating to abuse consists of the following:

- A letter written by [REDACTED] a Victim Outreach Coordinator at the New Beginning Center, dated December 17, 2002 that states that the petitioner came to their agency for domestic violence services because of past psychological and physical abuse from his wife. It is noted that [REDACTED] does not provide any details about the alleged abuse.
- An affidavit written by [REDACTED] a friend of the petitioner, which states that the petitioner told him that the petitioner's wife was abusing him verbally and physically. The affiant has no first hand knowledge of abuse so his affidavit has little evidentiary weight.
- A letter written by [REDACTED] stating that the petitioner is an adult onset diabetic. The letter says nothing about abuse.
- In his initial statement dated September 11, 2003, the petitioner asserted that his wife was possessive and jealous. He further asserted that his wife refused to allow him to get a job. He said that his wife would order him to have sex with her even if he did not want to. He said that she ordered him to attend to household chores and that she slapped him across the face when she was angry. He said that his wife refused to allow the petitioner to obtain medical care even though he fainted several times. He said that his wife threatened to have him deported and that she had him arrested for second-degree assault.
- Evidence that second degree assault charges against the petitioner were dropped on March 22, 2002.
- In a statement dated September 22, 2004, the petitioner alleged that his wife "started to slap...spit...grab and shake his head." He said that his wife would not allow him to touch any foodstuff outside her presence. The petitioner's allegations of abuse in the second statement dated September 22, 2004 appear to be embellished in comparison with the allegations in his first statement. His claims of abuse escalated considerably.

The petitioner's wife's dismissed complaint does not establish that her behavior 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 does not persuasively establish, however, that the marital problems allegedly caused by [REDACTED] were part of an overall pattern of physical violence or amounted to psychological or sexual abuse.

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

The next issue to be addressed in this proceeding is whether the petitioner established that he had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married his wife in good faith. The petitioner provided Citizenship and Immigration Services (CIS) with his own statements. The evidence on the record is insufficient to establish that the petitioner married his citizen spouse in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

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.

Finding the evidence insufficient to establish that the petitioner entered into the marriage in good faith, the director requested that he submit additional evidence. The director indicated the types of evidence that the petitioner could submit, such as quote.

The evidence on the record relating to the petitioner's intent to enter into the marriage in good faith is as follows:

- The marriage certificate.
- Four photographs of the petitioner and his wife, family and friends.
- Two statements by the petitioner.
- A video tape of the wedding ceremony.

The petitioner indicated on the Form I-360 that he wed his lawful permanent resident wife in July 1996. He further indicated that they separated in December 2001, yet he provided no evidence that he and his wife shared financial responsibilities or jointly owned property. The petitioner provided some detail about his courtship but very little regarding his married life and shared experiences. The evidence is insufficient to establish that the petitioner entered into the marriage in good faith; therefore, the petition may not be approved.

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.