



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B9

FILE:

Office: VERMONT SERVICE CENTER

Date: MAY 25 2006

[REDACTED]
EAC 04 175 51244

IN RE:

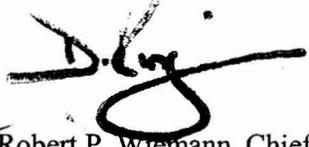
Petitioner: [REDACTED]

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of Vietnam who last entered the United States as a fiancé (K-1) on August 10, 2002 on the basis of an approved Form I-129F petition filed by [REDACTED] also known as [REDACTED] U.S. citizen. On August 14, 2002, the petitioner married Ms. [REDACTED] in Santa Ana, California. The petitioner filed a Form I-360 on May 20, 2004 seeking 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 U.S. citizen spouse. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a notice on January 24, 2005 requesting, *inter alia*, evidence that Ms. [REDACTED] subjected the petitioner to battery or extreme cruelty. On March 17, 2005, the petitioner responded with additional testimonial evidence. On August 24, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty. On appeal, counsel submits a brief and additional 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 the additional testimony submitted on appeal does not overcome this basis for denial. Nonetheless, the case will be remanded for issuance of a Notice of Intent to Deny (NOID).

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 or the alien's child 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.

Battery or Extreme Cruelty

As evidence of battery or extreme cruelty, the petitioner initially submitted his statement dated May 12, 2004. The petitioner states that on July 29, 2003, Ms. [REDACTED] withdrew all the money from their joint bank account, closed the account and kicked him out of their apartment. He further states that his wife took his money and went out with another man because he did "not make good money." In response to the director's request for additional evidence, the petitioner submitted a second statement dated March 10, 2005 and a copy of Ms. [REDACTED] response to the appointment notice for the petitioner's Form I-485 application to adjust status. Ms. [REDACTED]'s note states, "The relationship between [the petitioner] and me is over. He did not live with me anymore so, I think I have no responsible [sic] for him anymore." In his March 10, 2005 statement, the petitioner reports that Ms. [REDACTED] cancelled her immigration petition for him without letting him know, called him stupid, did not respect him and complained about his inability to make more money.

On appeal, the petitioner submits a third statement dated October 17, 2005. The petitioner explains that after their marriage, his wife was laid off and she yelled at him more often and insulted him. He reports that many times when they went out with friends, Ms. [REDACTED] was controlling and "used bad words to call [him] as if [he] were an animal." The petitioner states that he was disappointed and embarrassed and decided not to go out with friends. The petitioner further states that after his wife kicked him out, he stopped by her apartment one day and saw another man at her home. The petitioner explains that

this incident confirmed rumors about his wife's extramarital affair and that he was heartbroken and lay in bed for days.

On appeal, the petitioner also submits a support letter from [REDACTED] a former friend of Ms. [REDACTED]. Ms. [REDACTED] states that when she had dinner with the former couple, she witnessed Ms. [REDACTED] treating the petitioner "like a slave" and forced him to eat and drink certain things. Ms. [REDACTED] further states that once when she was speaking to Ms. [REDACTED] on the telephone, Ms. [REDACTED] referred to the petitioner as "the stupid guy." Ms. [REDACTED] also reports that one day she visited Ms. [REDACTED] and Ms. [REDACTED] told her that she had a boyfriend and that she had kicked the petitioner out because she was "so tired of that stupid guy." The petitioner submitted no further evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and does not explain why such evidence does not exist or is unobtainable.

The current record fails to establish that Ms. [REDACTED] 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 petitioner does not state that Ms. [REDACTED] ever physically assaulted him or threatened him with physical harm and the present record does not demonstrate that Ms. [REDACTED] mistreatment and abandonment of the petitioner amounted to psychological abuse or were part of an overall pattern of violence. The present record thus fails to establish that Ms. [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Nonetheless, the case will be remanded because the director failed to issue a NOID before denying the petition. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) 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.

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.