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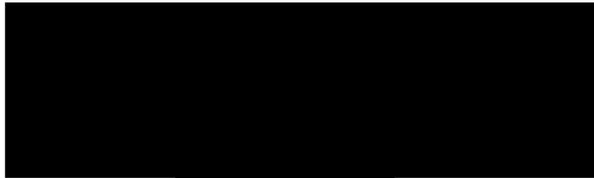


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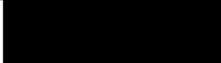
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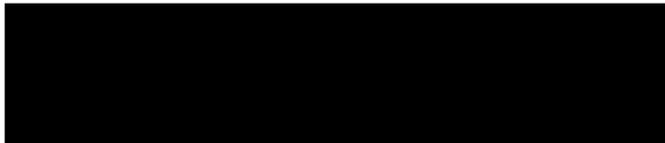
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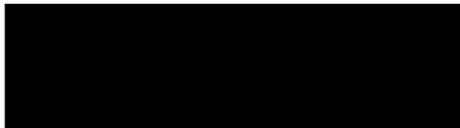
IN RE:

Petitioner:



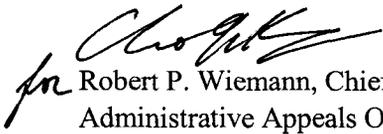
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The June 4, 2007 decision of the director will be affirmed and the petition will be denied.

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 a child of 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).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The director initially denied the petition on July 6, 2005, based upon the finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse. On appeal, the AAO concurred with the findings of the director. In addition, the AAO found that the petitioner failed to establish that he had a qualifying relationship as the spouse of a United States citizen. However, the AAO remanded the case 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).

Upon remand, the director issued a NOID on November 27, 2006 in accordance with the AAO's March 30, 2006 remand decision. The petitioner, through counsel, timely responded to the director's NOID with additional evidence. On June 4, 2007, after addressing the statements made in counsel's brief and additional evidence received into the record, the director found that the petitioner had sufficiently established that he had a qualifying relationship as the spouse of a United States citizen. However, the director found that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse. The director's discussion will not be repeated here. The director certified his decision to the AAO for review and notified the petitioner, through counsel, that he could submit a brief to the AAO within 30 days of service of the director's decision.

In response to the director's certification notice, counsel submitted a letter in which he reasserts the petitioner's claim of abuse and indicates that ample documentation is "detailed throughout the alien file" Upon review, we concur with the director's determination. As all of the relevant evidence submitted prior to the AAO's remand has been adequately discussed in the AAO's previous decision, our review will focus on the evidence submitted in response to the director's NOID. The evidence consists of the following documents related to the petitioner's claim of abuse:

- Prescriptions issued to the petitioner for [REDACTED]
- A document from Mount Carmel Guild indicating the petitioner's [REDACTED] appointment;
- A copy of the petitioner's Complaint for Divorce from, his former spouse, E-B-

In his brief, counsel states that the petitioner's prescriptions and appointment with [REDACTED] evidence which demonstrates that the petitioner "is still suffering from depression and actually taking anti-depressant medication." While we do not dispute these claims, as indicated in our previous decision, the fact that the petitioner suffers from depression is not evidence that he was battered by or subjected to extreme cruelty. In our previous decision we stated:

. . . that the petitioner suffers from depression due to circumstances in his marriage and its eventual dissolution, [sic] does not establish that what the petitioner claims to have suffered during his marriage can be considered battery or extreme cruelty. While the petitioner's depression may be a direct result of his spouse's actions, not any claimed action will suffice to establish the petitioner's claim of abuse. Rather, the petitioner must establish that such actions are considered to be battery or extreme cruelty.

We then discussed the petitioner's claims that his spouse's behavior was "unpredictable," that she had an affair, and that she made "unreasonable" demands such as demanding "outrageous sums of money to do her hair, nails and buy clothes," and found that such claims did not demonstrate that his spouse's nonviolent actions rose to level of those acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution or that they were part of an overall pattern of abuse.

In response to the NOID, while the petitioner did not provide any further description of the claimed abuse or argument to establish that the claims previously made do rise to the level of those contained in the regulation, counsel submitted a copy of the petitioner's Complaint for Divorce as evidence that a divorce on the grounds of extreme cruelty in New Jersey "is analogous to the definition of extreme cruelty and battery as is outlined in [the Act and regulation]." The submission of the Complaint for Divorce appears to have been made in response to our discussion regarding the Judgment of Divorce (which counsel submitted on appeal) in our remand decision:

[Counsel contends] that the petitioner has "pleaded to and provided a cause of action for divorce based on the grounds of **extreme cruelty** . . .," and contends that the judgment is further evidence to establish that the petitioner was subjected to extreme cruelty by his spouse. We are not persuaded by counsel's argument. First, counsel does not provide the initial complaint for divorce or other evidence to establish what claims were proffered by the petitioner in order for the court to determine that the petitioner's spouse's actions satisfied the grounds for extreme cruelty. More importantly, counsel does not provide any legal argument or citation to show that a finding of "cruel treatment" in a divorce proceeding is tantamount to a finding of "extreme cruelty" as defined by 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner's Complaint for Divorce alleges that the petitioner "is currently suffering from **severe depression** due to the extreme cruelty of [his spouse][emphasis in the original]." However, the complaint only generally refers to the extreme cruelty of the petitioner's spouse and does not elaborate on what actions constituted the "extreme cruelty" that caused the petitioner's depression. While the complaint further alleges

that the petitioner's spouse had an affair and made numerous unreasonable financial demands, no other specific claims were made in the complaint. The claims contained in the complaint are the same as those previously considered by the director and the AAO and found to be insufficient to establish a claim of battery or abuse as described in 8 C.F.R. § 204.2(c)(1)(vi).

Accordingly, we concur with the findings of the director that the petitioner has not established that he was battered by or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the June 4, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The June 4, 2007 decision of the director is affirmed.