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Washington, DC 20529



U.S. Citizenship  
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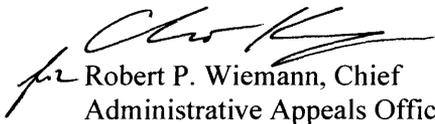
Petitioner:

PETITION: Petition for Immigrant Abused 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 matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification 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 battered or subjected to extreme cruelty by a United States citizen.

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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on October 27, 2004, for failure to establish the requisite battery or extreme cruelty. In our January 8, 2007 decision on appeal, we concurred with the director's determination and further found that the petitioner had not established his good moral character. We remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on February 26, 2007, which informed the petitioner, through his former counsel, that he had failed to establish the requisite abuse and good moral character. The petitioner responded with additional evidence, which the director found sufficient to establish the petitioner's good moral character, but not the petitioner's claim of abuse. Accordingly, the director denied the petition on July 2, 2007 on this latter ground and certified his decision to the AAO for review.

The relevant evidence submitted below was fully addressed in our prior decision, incorporated here by reference. In response to the NOID, as it relates to his claim of abuse, the petitioner submitted a new affidavit (notarized on April 24, 2007), copies of his and his spouse's medical records, affidavits from relatives and friends, and copies of documents previously submitted. The affidavits submitted by the petitioner's friends and relatives, however, are identical to the affidavits that were previously submitted. Although the affidavits submitted in response to the NOID contain a more recent notary date, the

contents of the affidavits are identical to the ones previously submitted and found to be lacking by the director and the AAO. Despite the previous finding by the director that the affidavits did not contain "sufficient detail" to establish the petitioner's claims and our decision ascribing lesser weight to the affidavits because they were "almost identical," the affidavits submitted in response to the NOID contained no further descriptions of the claimed abuse or further probative details to establish the petitioner's claims.

In his affidavit, the petitioner claimed that the medical records are evidence of the alleged abuse perpetrated against him, including the fact that his spouse "began to see a psychologist to help her with her anger problem." We are not persuaded by the petitioner's testimonial or documentary evidence submitted in response to the NOID. First, although the petitioner submitted statements regarding his treatment at an emergency room on August 23, 2002 and June 24, 2003, and a dental procedure on May 31, 2003, the petitioner submitted no testimonial or documentary evidence that describes his injuries or treatment and relates the injuries to the abuse allegedly perpetrated against him by his spouse. Second, although the petitioner submitted medical statements that he claimed were evidence of his spouse's treatment by a psychologist for help with her "anger problem," the sole evidence that appears to relate to her psychological treatment is a statement, dated May 8, 2003, which shows the petitioner's spouse received service described as "IND PSY THER 45-50 MIN CLNI." The petitioner has not provided any probative details regarding this treatment or how it relates to the alleged abuse. The remaining evidence relates to what appears to be the petitioner's spouse's rehabilitation due to a car accident, a visit to the emergency room, and surgery. The petitioner does not explain how this remaining evidence pertaining to his spouse relates to his claim of abuse.

On certification, although counsel submits no further evidence, he does submit a brief in which he states that the petitioner has submitted sufficient evidence to establish the requisite battery and extreme cruelty. Counsel argues that the petitioner's statements and those submitted on his behalf provided "specific details" of the petitioner's spouse's "manipulative and socially isolating behavior," as well as incidents of "denigration and public humiliation." We do not agree. Despite being notified on multiple occasions that his affidavit lacked probative details of the alleged abuse, the affidavit submitted by the petitioner in response to the NOID offered no further details from which to support his claim of battery or extreme cruelty. Rather, he stated generally that at "the end of the year 2002, [my spouse's] action become [sic] worse. She not only yells at me, she also begins to hit me." Similarly, the affidavits provided on the petitioner's behalf by his family and friends, were identical to those previously submitted and found lacking.

Accordingly, we concur with the director's determination that the petitioner failed to demonstrate that he was battered or subjected to extreme cruelty by his spouse during their marriage. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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. The petitioner has not sustained that burden.



**ORDER:** The director's decision of July 2, 2007 is affirmed. The petition is denied.