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Office: VERMONT SERVICE CENTER

Date: **MAR 27 2008**

IN RE: Petitioner: [REDACTED]

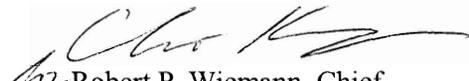
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


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 January 4, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (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 October 14, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage. On appeal, the AAO concurred with the findings of the director but remanded the case on July 11, 2006 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). In addition, we requested the director to consider on remand whether the approval of the petition was precluded by section 204(g) of the Act.

Upon remand, the director issued a NOID on August 29, 2006, which notified the petitioner of the deficiencies in the record regarding his claim of battery or extreme cruelty and the lack of clear and convincing evidence of his good faith marriage. The petitioner, through counsel, timely responded to the director's NOID with a brief. On January 4, 2007, the director issued a decision in which she determined that the petitioner failed to establish his claim of abuse and to provide clear and convincing evidence of his good faith marriage. The director's discussion will not be repeated here. The director certified her decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. The record contains a brief from counsel dated January 16, 2007 and a new psychological assessment. On certification, counsel claims that the new psychological assessment was submitted in response to the director's NOID. However, although counsel's NOID response indicates that a new assessment would be forthcoming, the record contains no evidence of the submission of a psychological assessment at that time. Therefore, we find no error on the part of the director and will consider the psychological assessment in our review on certification.

Our review focuses on the documentation submitted subsequent to the AAO's remand decision, incorporated here by reference. The evidence consists of counsel's brief submitted in response to the director's NOID and the psychological assessment submitted on certification. In his brief, counsel argued that the director "downplayed the psychological pain that the Petitioner has had to deal with as a result of being separated from his children." Counsel then reiterates the claims that the petitioner's spouse "insulted him regularly; started making excuses not to see him . . . was always asking for money for her children . . . [and] threatening to call the immigration authorities on him." These claims were previously addressed by the director and the AAO and found insufficient to establish that the petitioner or his children were battered or subjected to extreme cruelty by his spouse during their marriage. Neither the petitioner nor counsel offers any further details or new claims or evidence that demonstrate his claim of abuse. Similarly, although the petitioner submits a new psychological assessment on certification, the assessment does not provide any probative details regarding the alleged abuse that took place during the petitioner's marriage. Rather, the assessment indicates that since the petitioner's last assessment, the petitioner "has not heard anything from [his spouse], despite numerous attempts to contact her."

As it relates to section 204(g) of the Act, in his brief, counsel argued that it is:

[A] contradiction to require a 'clear and convincing' evidence standard to overcome INA § 204(g) when Congress designed the 'any credible evidence standard' of 8 C.F.R. § 204.2(c)(2)(i) because they realized that in abusive situations it would be unrealistic to expect the conventional evidence that one sees in the standard marriage cases.

We are not persuaded by counsel's argument. While counsel cites to the paragraph of the abused spouse regulation regarding "any credible evidence," he fails to acknowledge that the regulation at 8 C.F.R. § 204.2(c)(1)(iv) explicitly requires that self-petitioners "comply with the provisions of section . . . 204(g) of the Act [.]". In addition, the regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in pertinent 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.

Sections 204(g) and 245(e) of the Act presume that a marriage entered into while an alien is in proceedings is a marriage that was entered into to circumvent the immigration laws and, therefore, require clear and convincing evidence of the good faith marriage. Counsel provides no legislative history or legal citation to support his argument that abused spouse self-petitioner's are not subject to sections 204(g) and 245(e) of the Act.

Counsel then argued that the filing of two separate Forms I-130, Petition for Alien Relative, on the petitioner's behalf by his spouse is evidence of his good faith marriage and noted that the initial Form I-130 was approved by Citizenship and Immigration Services (CIS). We are not persuaded by counsel's argument. The fact that the petitioner's spouse filed petitions on his behalf is not evidence that the petitioner entered into his marriage in good faith, rather than to gain an immigration benefit. Further, counsel's reliance on the initial approval of the Form I-130 is weak given that the petition was subsequently revoked by CIS based on discrepancies which indicated that the petitioner's marriage was "strictly for [the petitioner] to procure permanent resident status in the United States and for no other reason."

No further testimonial or documentary evidence regarding the petitioner's good faith marriage was submitted in response to the director's NOID or on certification.

Based upon the above discussion, we concur with the findings of the director that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage and that he failed to provide clear and convincing evidence of his good faith marriage. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied. Section 204(g) of the Act further mandates denial of the petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 January 4, 2007 decision of the director is affirmed and the petition is denied.

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