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[REDACTED]

FILE: [REDACTED]
EAC 04 102 50523

Office: VERMONT SERVICE CENTER

Date: **MAY 20 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:
[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 AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

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

The director denied the petition finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage.

The petitioner, through counsel, submits a timely appeal.

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).

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].

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 . . . spouse, 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.

The petitioner in this case is a native and citizen of Nigeria who indicates that he entered the United States without inspection in June 1997. On September 15, 1997, the petitioner married S-G,¹ a United States citizen, in Texas. S-G- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on September 29, 1997. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The petitioner withdrew the Form I-485 on September 7, 2001 and both the Form I-485 and the Form I-130 were denied by Citizenship and Immigration Services (CIS) on March 22, 2002. The petitioner and S-G- were divorced on December 27, 2001.²

On March 14, 2002, the petitioner married G-C,³ a United States citizen, in Texas. On April 1, 2002, G-C- filed a Form I-130 on the petitioner's behalf. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. G-C- withdrew the Form I-130 and the Form I-485 was denied on January 12, 2004.

The petitioner filed the instant Form I-360 on February 20, 2004. On October 12, 2004, the director requested further evidence of, *inter alia*, the requisite abuse. The petitioner submitted additional evidence on December 21, 2004. On January 13, 2005, the director denied the petition finding that the petitioner failed to establish that he had been battered or subjected to extreme cruelty by his spouse during their marriage. The petitioner timely appealed.

¹ Name withheld to protect identity.

² District Court of Harris County, Texas, 309th Judicial District, Cause no.: 2 [REDACTED] 3.

³ Name withheld to protect identity.

On appeal, counsel argues that the evidence submitted is sufficient to establish the petitioner's claim of abuse. Upon review, we concur with the director's conclusion and find that the petitioner's appellate submission does not overcome the ground for denial. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2005).

Battery or Extreme Cruelty

At the time of filing, the petitioner submitted three letters to support his claim of abuse. The first letter, submitted by [REDACTED] indicates that he provided counseling and attended prayer sessions with the petitioner. Rev. [REDACTED] states that the petitioner told him his marriage was "on the rocks," that he and his spouse were "not doing very well," and that the petitioner's spouse was not treating the petitioner "right." Rev. [REDACTED] further indicates that the petitioner's spouse was seeing other men and that she ultimately kicked the petitioner out of their home in order to live with her boyfriend. Rev. [REDACTED] does not describe any specific behavior on the part of the petitioner's spouse or elaborate on the claim that the petitioner was not treated "right" by his spouse.

The letter from [REDACTED], a coworker of the petitioner describes the petitioner's spouse as repeatedly calling the petitioner at work. Ms. [REDACTED] states that when she answered the phone, the "calls were screams blaring with insults and innuendoes[sic], followed by questions." [REDACTED] does not describe any of the alleged "insults and innuendos" and does not indicate that any of those comments were directed at the petitioner, rather than at [REDACTED]. [REDACTED] another coworker of the petitioner describes receiving similar phone calls from the petitioner's spouse. She states that the petitioner's spouse would call "relentlessly" and would "belligerently use foul language and connotations," when told that the petitioner was busy. Again, however, the letters do not describe any verbal abuse being directed at the petitioner and fail to specifically describe the content of any single conversation.

The petitioner also submitted a mental health evaluation prepared by [REDACTED], LCSW. The evaluation indicates that the petitioner's spouse "changed" after they started living together and that she "really changed" after they were married. The evaluation further indicates the petitioner's belief that his spouse was having an affair. The evaluation states that after they separated, the petitioner's spouse would not let him see his son until the petitioner filed for divorce and that his spouse is now threatening to have the petitioner deported. The evaluation describes the petitioner as being taken advantage of financially and claims that his spouse threw objects and physically attacked the petitioner, which caused a black eye.

The petitioner submitted no further evidence in support of his claim of abuse in response to the director's October 12, 2004 RFE. Additionally, no further evidence was submitted on appeal.

As discussed above, we do not find the testimonial evidence submitted on the petitioner's behalf sufficiently establishes his claim of abuse. The letters are general in nature and fail to provide any probative details which would establish that the petitioner was battered or that he was subjected to

extreme cruelty by his spouse. The claims that his spouse would make repeated telephone calls to his place of work and that she would make unpleasant comments to his coworkers does not demonstrate the requisite extreme cruelty. The vague descriptions of events contained in the petitioner's mental health evaluation are similarly inadequate. For instance, although the evaluation generally alleges that the petitioner's spouse threw objects and that she physically attacked him, it does not discuss any specific incident in probative detail. Although the evaluator also determined that the petitioner was verbally abused, the evaluation only generally describes the petitioner's spouse as being "short tempered" and states that she "complained about various things." The evaluation also fails to detail the petitioner's spouse's threats regarding the petitioner's immigration status. Finally, the evidence does not establish the petitioner's economic abuse based on the claim that the petitioner paid his spouse's bills when she lost her job and that she also "ran up" his credit card. Instead, the record indicates that the petitioner had his own job and access to and control over his own money. The remaining claims regarding the petitioner's spouse's alleged affair also fail to establish a claim of extreme cruelty.

On appeal, counsel reiterates the claims made below. We note that while counsel refers to various claims as being documented in the evaluation such as that the petitioner's spouse threw objects "at" the petitioner and that she made "demeaning sexual remarks" about the petitioner, the evaluation does not contain these specific claims. Although the evaluation does state that the petitioner's wife gave him a black eye, as counsel reiterates on appeal, neither the evaluation nor any of the supporting testimony describe that or any other incidents of battery in probative detail.

In sum, the testimonial evidence is vague and lacks specific, probative details which establish a claim of battery or extreme cruelty. Moreover, as described, the evidence fails to demonstrate that the petitioner's spouse's actions rose to the 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.

In accordance with the above discussion, we concur with the director's determination that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2005) directed that CIS provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision was made. 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.

In addition to the single ground for denial discussed above, we find an additional ground that must be addressed on remand. Specifically, the record indicates that the Form I-130 filed on the petitioner's behalf by S-G- was denied based upon the determination that their marriage was "fraudulently contracted solely to confer immigration benefits . . ." Accordingly, it appears that approval of the instant petition may be precluded by section 204(c) of the Act.

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; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the AAO for review.