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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

B9

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: [illegible]
EAC 02 292 51561

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition on July 9, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Fiji who is 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 the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse.

On appeal, counsel for the petitioner submits a brief.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

> (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
>
> (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

> A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided . . . with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

> *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 abused 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 regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

> *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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

According to the evidence on the record, the petitioner was issued a B-2 nonimmigrant visitor's visa on August 12, 1998, at the American Embassy in Suva, Fiji. The petitioner was admitted to the United States as a B-2 nonimmigrant visitor on August 20, 1998. The petitioner wed United States citizen [redacted] on January 19, 1999 in San Bruno, California. The petitioner's spouse filed a Form I-130 petition on his behalf. The petition was approved on March 27, 2000. On February 22, 2001, the District Director, San Francisco District Office, issued a notice of intent to revoke the approval of the petition. On March 30, 2001, the petitioner's spouse withdrew the Form I-130 and initiated divorce proceedings. Action was terminated on the Form I-130 petition on May 4, 2001. On September 21, 2002, the petitioner filed a self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the

marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to show that he has resided with his citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that he is a person of good moral character, and has been abused by, or the subject of extreme cruelty perpetrated by his citizen spouse, the director asked him to submit additional evidence (RFE). The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty, and that he is a person of good moral character. The petitioner requested a 60-day extension to respond to the RFE. On August 29, 2003, the request for an extension was granted.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here.

On appeal, counsel for the petitioner submits a brief.

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse. The evidence consists of the following:

- The petitioner's declaration dated September 10, 2003.
- Letters from friends and relatives of the petitioner.
- A psychological evaluation dated May 23, 2002.

In his declaration, the petitioner stated that his wife and father-in-law became very controlling of him and that his wife became verbally abusive towards him. He said that his wife forbade his relatives to visit and forbade the petitioner to attend family functions. He indicated that one day he returned home to discover that the locks had been changed on his house. The petitioner states that he lost his investment in the house and when he learned that his wife began dating someone else, it broke his heart. The letters state that the beneficiary lost everything when his marriage dissolved.

In a psychological evaluation, Dr. Frank Varela wrote that the petitioner is "experiencing depression secondary to Immigration Documentation noting that he had listed himself as a married individual from Fiji." Dr. Varela further stated that the petitioner was verbally mistreated by his wife and his parents-in-law, his mobility was restricted, his house was taken from him. Dr. Varela reported that the petitioner felt shame and humiliation and suffers depression due to the financial burden of trying to correct his immigration status.

As provided in 8 C.F.R. § 204.2(c)(1)(vi), the qualifying abuse must have been **sufficiently aggravated to have reached** the level of "battery or extreme cruelty." Neither the evaluator nor the affiants found that the claimed abuse perpetrated toward the petitioner by his spouse was "extreme." The petitioner has failed to establish that she was battered by or was the subject of "extreme cruelty" as **contemplated by Congress**, and to overcome the director's finding pursuant to 8 C.F.R. § 204.2(c)(1)(i)(E).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.