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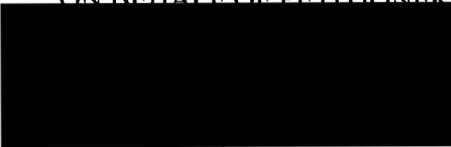


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JUL 10 2006**
EAC 05 191 50764

IN RE: Petitioner: [REDACTED]

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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of 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 record did not establish the requisite battery or extreme cruelty.

On appeal, counsel submits additional evidence.

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 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).

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 . . . , 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 the Philippines who entered the United States on July 16, 2004 as a nonimmigrant spouse of a U.S. citizen (K-3). On June 9, 2003, the petitioner married [REDACTED] a U.S. citizen, in the Philippines. On June 17, 2005, the petitioner filed this Form I-360. The petitioner states that on August 30, 2005 the San Diego County Superior Court of California dissolved his marriage to Ms. [REDACTED]. On August 30, 2005, the director issued a notice requesting the petitioner to submit additional evidence that, *inter alia*, Ms. [REDACTED] battered or subjected him to extreme cruelty. The petitioner submitted further evidence on September 30, 2005. On November 16, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty. The petitioner, through counsel, timely appealed.

As we concur with the director's determination that the petitioner meets all the other statutory requirements, the only issue on appeal is whether Ms. [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage. We concur with the director's conclusion and find that counsel's claims and the evidence submitted on appeal do 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) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Battery or Extreme Cruelty

The petitioner initially submitted no evidence of battery or extreme cruelty. In response to the director's request for evidence, the petitioner submitted his own affidavit and that of his sister, [REDACTED]. In his September 19, 2005 affidavit, the petitioner states that after he returned from a visit to his sister, Ms. [REDACTED] was angry and hostile and used profanity and abusive language with him in public and in front of her family. He reports that Ms. [REDACTED] became secretive about telephone calls, would leave the house and not tell him where she was going and refused to sleep with the petitioner. The petitioner explains that Ms. [REDACTED] eventually filed for divorce. The petitioner states, "I have been abandoned and mistreated by my former wife who I still love, but who has unexplainably rejected

my affections.” The petitioner reports suffering severe emotional distress as a result of Ms. [REDACTED] actions.

Ms. [REDACTED] states that on several occasions in her presence, Ms. [REDACTED] insulted and swore at the petitioner and that she heard Ms. [REDACTED] yelling and cursing the petitioner over the telephone when the petitioner was visiting Ms. [REDACTED]. Ms. [REDACTED] reports that the petitioner became depressed and emotionally drained by Ms. [REDACTED] rejection of his love and intimacy.

We concur with the director’s determination that the statements of the petitioner and Ms. [REDACTED] do not establish the requisite battery or extreme cruelty and we do not repeat her discussion here. On appeal, the petitioner submits his second affidavit and affidavits from his other sister, [REDACTED], and his friend, [REDACTED]. In his second affidavit, the petitioner states that Ms. [REDACTED] controlled all aspects of his life, for example, she told him when he could go grocery shopping, go out and make telephone calls. The petitioner states that Ms. [REDACTED] often told him he was all alone in the world and she was the only person who could help him. The petitioner further reports that Ms. [REDACTED] regularly criticized and cursed him. The petitioner explains that Ms. [REDACTED] paid all of their expenses, that he had to ask her for money if he wanted to go out and that she often made fun of his financial dependence on her. The petitioner reports becoming emotionally distraught, depressed and emasculated by Ms. [REDACTED]’s treatment. He states that when he returned after visiting his sister, Ms. [REDACTED] threw him out of their home.

Ms. [REDACTED] the petitioner’s sister, states that she “personally witnessed” Ms. [REDACTED] trying to control the petitioner’s life, but she does not describe in detail any incidents that she witnessed. Ms. [REDACTED] states that she noticed that the petitioner became depressed, quiet and withdrawn during his marriage. Mr. [REDACTED] states that he has “first-hand knowledge that [Ms.] [REDACTED] mentally abused” the petitioner on many occasions, but he does not describe in detail any specific incidents of abuse that he witnessed. Mr. [REDACTED] states that he often spoke to the petitioner when he was living with Ms. [REDACTED] and that the petitioner told him that Ms. [REDACTED] controlled his use of the telephone. Mr. [REDACTED] reports that he noticed that the petitioner became sullen, withdrawn, subdued and sad during his marriage.

The additional testimonial evidence submitted on appeal fails to establish that Ms. [REDACTED] battered or subjected to the petitioner to extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The record does not indicate that Ms. [REDACTED] ever threatened the petitioner with violence and the evidence does not demonstrate that Ms. [REDACTED] actions amounted to psychological or sexual abuse or that her nonviolent actions were part of an overall pattern of violence. Moreover, the petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The petitioner submitted no documentation that, for example, he sought protection and shelter from Ms. [REDACTED] alleged abuse or that he sought assistance in dealing with the effects of her alleged abuse from medical personnel, religious figures, or social service agency personnel. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The present record does not demonstrate that Ms. [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is 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.

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. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.