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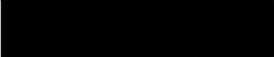
U.S. Citizenship  
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **NOV 06 2006**

EAC 05 184 52514

IN RE:

Petitioner:



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:

SELF-REPRESENTED

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 because the petitioner did not establish that his wife battered or subjected him to extreme cruelty.

On appeal, the petitioner 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 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 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 eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which 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 further explicated 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 Haiti who entered the United States on January 4, 2002 as a nonimmigrant visitor (B-2). On July 11, 2003, the petitioner married M-B-<sup>1</sup>, a U.S. citizen, in New York. On June 13, 2005, the petitioner filed this Form I-360. The director issued two Requests for Evidence (RFE) relevant to the petitioner's claim of battery or extreme cruelty. The petitioner timely responded to each RFE. On January 24, 2006, the director denied the petition for lack of the requisite battery or extreme cruelty. The petitioner timely appealed.

On appeal, the petitioner reasserts his eligibility and submits statements from two friends and his physician. **We concur with the director's conclusion. The petitioner'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 case without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

The petitioner submitted two affidavits dated June 7 and September 20, 2005 in which he states that his wife never gave him keys to their home and that he would sometimes have to stay with a friend when his wife did not let him into their home. On September 2, 2004, the petitioner states that he came home early from work and his wife answered the door with another man with whom she then left. When she returned, the petitioner states that they argued, his wife told him to leave while holding a knife in her

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<sup>1</sup> Name withheld to protect individual's identity.

hand and then slapped him on his face and slashed him with the knife on his left forearm. The petitioner reports that he called the police, but his wife pulled out the telephone wire and threatened to have him deported. The petitioner states that he left to stay with a friend and called his doctor. The petitioner explains that he did not take any action against his wife at that time because he loved her and wanted to live with her.

In February 2004, the petitioner states that he went to see his wife about filing a joint tax return, but she threw his passport at him saying it was the only thing he had left in her house and then she told him that if he ever came back she would pay someone to shoot him. The petitioner states that his wife later falsely accused him and obtained an order of protection against him. The petitioner reports that he then went to court to request an order of protection against his wife. The petitioner further states that his wife used the immigration process to intimidate and mistreat him.

The petitioner submitted an assessment report written by [REDACTED], licensed social worker, which is of limited probative value. As noted by the director, Ms. [REDACTED] assessment is based on a single meeting with the petitioner of unspecified length. Ms. [REDACTED] states, "It is my impression that [the petitioner] was the victim of psychological, emotional, verbal and physical abuse from his wife. His description of their turbulent relationship and his conflicting feelings towards her are indicative of an individual who has suffered from domestic abuse." Yet, Ms. [REDACTED] indicates that her assessment is based solely on the petitioner's statements during their single session and she does not indicate that any clinical diagnostic tools were used to assess the petitioner's mental health condition.

The petitioner submitted a photograph showing a mark on his left forearm and a letter dated March 17, 2005 from his physician, Dr. [REDACTED], who states that the petitioner was treated in September 2004 for a stab wound on his left arm. Dr. [REDACTED] states that the petitioner reported that he was a victim of domestic violence. However, the court documents submitted by the petitioner do not support his claims. On April 11, 2005, the Kings County Family Court of New York issued a Temporary Order of Protection for the petitioner's wife and against the petitioner. CIS records further show that this order of protection was a continuation of a prior order issued against the petitioner on December 15, 2004. On February 15, 2005, the petitioner filed a Family Offense Petition for an order of protection against his wife, but on December 16, 2005, the court dismissed the petitioner's case with prejudice due to his withdrawal of the petition.

In his letter submitted on appeal, the petitioner claims that he never received notice of his wife's order of protection against him and asserts that the order was issued without any proof that he harmed her. The petitioner also claims that he was never given a chance to present his testimony for his petition for an order of protection against his wife and he states that his court-appointed attorney was always in a rush and never listened to him.

On appeal, the petitioner also submits letters from his friends, [REDACTED] and [REDACTED] and a second letter from Dr. [REDACTED]. Mr. [REDACTED] simply states that the petitioner confided in him regarding

his marital difficulties a few months after the petitioner was married and that he witnessed the “tragic decline” of the former couple’s relationship. Mr. [REDACTED] does not indicate that he ever witnessed any incidents of abuse. Mr. [REDACTED] states that the petitioner called him around 2:00 in the morning on September 3, 2004 and said he had been thrown out of his home. Mr. [REDACTED] states that when he picked up the petitioner, the petitioner’s left forearm was bleeding.

In his second letter submitted on appeal, Dr. [REDACTED] repeats that the petitioner was treated in September 2004 “for a stab wound of the left forearm allegedly perpetrated by his wife during an altercation.” Dr. [REDACTED] notes, “He visited this office several times before he recovered from the damage. At his first visit after the incident, other parts of his body were affected by many bruises and soft tissue contusions.” Dr. [REDACTED] further states that he advised the petitioner to consult with a psychiatrist and that the petitioner has still not completely recuperated from his past emotional stress.

The evidence indicates that the petitioner was injured during an altercation with his wife. The record does not establish, however, that the petitioner’s wife was the primary aggressor. Rather, the initial and extended protection order obtained by the petitioner’s wife against him and the dismissal of the petitioner’s own petition for an order of protection against his wife contradict the petitioner’s claims. The present record thus fails to establish that the petitioner’s wife battered or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner did not demonstrate his eligibility for immigrant classification under 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.