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U.S. Citizenship  
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Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: AUG 07 2006  
EAC 05 181 52424

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:

[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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 her United States citizen spouse.

The director denied the petition, finding that the petitioner failed to establish that she resided with her husband and that he battered or subjected her to extreme cruelty.

The petitioner, through counsel, timely appealed.

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 Colombia who entered the United States on July 25, 2000 as a nonimmigrant visitor (B-2). On August 29, 2001, the petitioner married [REDACTED] a U.S. citizen, in North Carolina. On June 9, 2005, the petitioner filed this Form I-360. On August 31, 2005, the director requested evidence of the former couple's joint residence and Mr. [REDACTED] battery or extreme cruelty. The petitioner submitted additional evidence on October 14, 2005. On November 14, 2005, the director denied the petition because the record failed to establish the requisite joint residence and battery or extreme cruelty. On the Form I-290B, counsel indicated that she would submit a brief and/or evidence within 60 days. Counsel dated the appeal December 15, 2005. On July 13, 2006, the AAO notified counsel that it had received no brief or additional evidence and requested counsel to submit copies of such documents within five business days. To date, over three weeks later, the AAO has received no response from counsel.

We concur with the director's determination that the petitioner is not eligible for immigrant classification under section 204(a)(1)(A)(iii). 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).

*Joint Residence*

On the Form I-360, the petitioner states that she resided with [REDACTED] from September 2001 to December 2004. As evidence of her residence with [REDACTED] the petitioner initially submitted a copy of her driver education certificate and copies of undated and unidentified photographs of herself and [REDACTED]. The certificate was issued to the petitioner individually and lists her address in North Carolina, but the document does not include any reference to [REDACTED]. The photographs indicate that the petitioner and [REDACTED] were together on certain occasions, but do not show that they resided together.

In response to the director's request for evidence, the petitioner submitted an earnings statement and an interim driver's permit for [REDACTED] that list his address as [REDACTED] in Hampton Bays, New York. The record contains no evidence that the petitioner also resided at the [REDACTED] address. In a letter dated September 18, 2005, [REDACTED] mother states that the former couple resided with her for a few months after their marriage. However, in her own affidavit, the petitioner states that after their marriage, she and [REDACTED] moved to New York with her parents.

[REDACTED] the [REDACTED] states that he has known the former couple for four years as active members of his community before they moved to Florida, where they now live at [REDACTED]. [REDACTED] statements also contradict the petitioner's own assertions. The petitioner lists the [REDACTED] residence as her mailing address, but states that the last place she resided with [REDACTED] was at [REDACTED]. In addition, in her affidavit, the petitioner states that [REDACTED] was incarcerated in or about December 2004 and that they separated after his release. The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii), although she states (in a letter dated October 4, 2005) that she and [REDACTED] had no joint accounts due to his lack of credit and incarceration.

The record contains no documentary evidence that the petitioner lived with [REDACTED] at any address. The testimony of [REDACTED] mother and [REDACTED] contradict the petitioner's own statements and she presents no explanation or evidence to explain these discrepancies. The petitioner submitted no documents jointly addressed to herself and [REDACTED] and in her affidavit, the petitioner provides no probative details about her alleged residence with [REDACTED]. Accordingly, the present record fails to establish that she resided with [REDACTED] as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

As evidence of battery or extreme cruelty, the petitioner initially submitted her affidavit and documents related to [REDACTED] criminal convictions and arrests. In her affidavit, the petitioner states that [REDACTED] would scream at her and hit her regularly. The petitioner explains that she had to hide to protect herself when [REDACTED] would come home after drinking or using drugs. The petitioner reports suffering from depression, anxiety and insomnia, which affected her work and caused her to be

fired from a job. The petitioner explains that she was too embarrassed to let anyone know about [REDACTED] behavior and she became socially isolated. [REDACTED] criminal records show that he was convicted of felony larceny and attempted breaking and entering a motor vehicle in North Carolina. The evidence does not indicate that the petitioner was a victim of, or otherwise involved in, [REDACTED] criminal offenses.

to the director's request for additional evidence, the petitioner submitted letters from [REDACTED]. [REDACTED] states that she became acquainted with the petitioner and her family through her position as a social worker. Of the petitioner and [REDACTED] states, "[A]fter certain interaction with the couple there were certain indications of verbal abuse. Later, my feelings were validated when [the petitioner] shared different scenarios that occurred." [REDACTED] provides no further details and does not indicate that she ever witnessed [REDACTED] abusing the petitioner. [REDACTED] states that he saw the petitioner twice between September 12 and September 20, 2005. [REDACTED] summarizes [REDACTED] behavior as related to him by the petitioner and states, "There is mild depression at the present time but problems during her marriage were significant and depressive symptoms and anxiety appeared to have been severe at that time." However, [REDACTED] indicates that he never saw the petitioner prior to her separation from [REDACTED] and he provides little probative discussion of why the petitioner's condition is consistent with having survived domestic violence, based on his clinical expertise and his observations of the petitioner.

The petitioner submitted no further evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Although she 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 petitioner relates few substantive details regarding [REDACTED] alleged abuse. [REDACTED] provides no significant, relevant information and [REDACTED] letter is based on the petitioner's own statements and contains little substantive analysis of the petitioner's condition as it relates to [REDACTED] alleged abuse. The record also does not show that the petitioner was the victim of, or was otherwise involved, in [REDACTED] offenses. Accordingly, the present record does not demonstrate that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii) of the Act.

Nevertheless, 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 Citizenship and Immigration Services (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 her 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.