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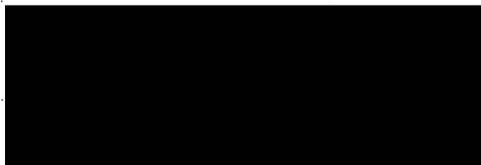
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED]
EAC 04 155 53903

Office: VERMONT SERVICE CENTER

Date: DEC 08 2006

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.

Robert P. Wremann, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 an 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 former wife battered or subjected him to extreme cruelty during their marriage.

On appeal, counsel submits a two-page brief.

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Jamaica who entered the United States on July 28, 1999. The petitioner married M-D¹, a U.S. citizen, in Hempstead, New York on December 21, 1996. On June 2, 2003, the former couple was divorced. The petitioner filed the instant Form I-360 on April 16, 2004. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, requested and was granted additional time to respond and submitted further evidence. On February 7, 2006, the director denied the petition for lack of the requisite battery or extreme cruelty.

On appeal, counsel asserts that the petitioner's former wife subjected him to extreme cruelty and that the director did not properly consider the petitioner's affidavit and "simplified his situation." We

¹ Name withheld to protect individual's identity.

concur with the director's determination. 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 the following evidence relevant to his claim of extreme cruelty:

- The petitioner's April 2, 2004 affidavit;
- Affidavit of Dorrel Cummings;
- Affidavit of [REDACTED];
- Affidavit of Terrence Spring;
- Psychological assessment of the petitioner by Dr. [REDACTED]

In his affidavit, the petitioner states that his former wife withheld sex, called him derogatory names, pressured him to pay all of their bills, threatened him with deportation, used his name and "ruined [his] credit and financial standing." Mr. [REDACTED] states that he once observed the petitioner's former wife flirting with other men and that when the petitioner confronted her, she said she could do whatever she wanted as long as she was in control of his "green card." Ms. [REDACTED] states that when she tried to counsel the former couple about their marriage, the petitioner's former wife was rude, said that she was the boss in the marriage and that the petitioner had to listen to her if he wanted his "papers." Mr. [REDACTED] states that he once witnessed an argument between the former couple where the petitioner's former wife called him a derogatory name and threatened to "call immigration on him."

In her psychological assessment of the petitioner, Dr. [REDACTED] diagnoses the petitioner with major depressive disorder, moderate severity and partner relational problem. Dr. [REDACTED] states: "It became clear during our interview, by his reports and through my observations of him, that [the petitioner] currently experiences several difficulties most likely brought about by [a] deep sense of betrayal that he has experienced in his chaotic marriage that impede his daily functioning." Dr. [REDACTED] states that her assessment is based on one meeting with the petitioner of unspecified length on August 12, 2005 and the Beck Depression Inventory II.

The evidence fails to establish that the petitioner's former wife battered or subjected him to extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The evidence does not indicate that the petitioner's former wife ever physically assaulted him, threatened him with violence or that her nonviolent behavior was part of an overall pattern of violence. The record also does not demonstrate that the conduct of the petitioner's former wife, as described in the petitioner's affidavit and those of his three acquaintances, constituted psychological or sexual abuse. Dr. [REDACTED] assessment indicates that the petitioner suffers from depression related to his former marriage, but does not establish that the behavior of the petitioner's former wife rose to the level of extreme cruelty.

The present record fails to establish that the petitioner's former 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.

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.