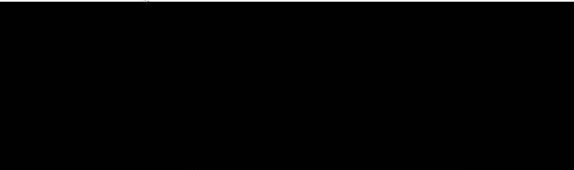


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U.S. Citizenship
and Immigration
Services

B9



FILE: [Redacted]
EAC 04 220 52228

Office: VERMONT SERVICE CENTER

Date: DEC 12 2006

IN RE: Petitioner:



PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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. 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 an immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien subjected to battery or extreme cruelty by his lawful permanent resident spouse.

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 brief and a copy of the petitioner's June 20, 2005 affidavit previously submitted below.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B), 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 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 record in this case provides the following pertinent facts and procedural history. The petitioner was born in Lebanon and is a citizen of Syria. He entered the United States on February 13, 1997 as a nonimmigrant visitor (B-1). On July 1, 2001, the petitioner married S-K-¹, a lawful permanent resident of the United States. S-K- filed a Form I-130, petition for alien relative, on the petitioner's behalf, which she withdrew on April 11, 2005. In these proceedings, the petitioner states that he and his former wife were divorced on April 18, 2005. The petitioner filed the instant Form I-360 self-petition on July 23, 2004. On March 9, 2005, the director issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty. The petitioner, through counsel, requested and was granted additional time to respond and timely submitted further documentation. On August 16, 2005, the director denied the petition for lack of the requisite battery or extreme cruelty.

On appeal, counsel contends that the director "misapplied the extreme-cruelty standard relevant to self-petitioning alien spouses." We concur with the director's conclusion. 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).

¹ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

The petitioner submitted the following evidence relevant to his claim of battery and extreme cruelty:

- The petitioner's affidavits dated July 20, 2004 and June 20, 2005;
- A letter dated July 19, 2004 from [REDACTED]
- The undated statement of the petitioner's mother, [REDACTED]
- The July 21, 2004 affidavit of the petitioner's brother, [REDACTED]
- The July 21, 2004 affidavit of the petitioner's older brother, [REDACTED]
- The July 21, 2004 affidavit of the petitioner's friend, [REDACTED]
- The July 21, 2004 affidavit of the petitioner's friend, [REDACTED]
- A copy of the petitioner's Application for Relief from Abuse, which was denied by the Connecticut Superior Court on July 19, 2004;
- An excerpt from the transcript of the divorce proceedings between the petitioner and his former wife;
- A copy of the Ex Parte Restraining Order issued by the Connecticut Superior Court against the petitioner for the protection of his former wife on July 29, 2004, which was extended to March 1, 2005; and
- A Stratford, Connecticut Police Incident Report dated July 28, 2004 arising from the petitioner's statement that his wife and her brother had threatened him and told him to leave the former couple's house.

In his affidavits, the petitioner states that his former wife verbally abused him and hit him twice during their marriage. He explains that a few months after their marriage, he realized that his former wife "had a very short fuse and would begin screaming at [him] for the smallest things." He describes several incidents where his former wife berated and insulted him in front of their families and friends. The petitioner states that his former wife insulted his family as being "low class" and that as a result of her behavior, he became isolated from his family and friends. The petitioner explains that his former wife had unfounded jealousy for what she misperceived as his attractions to other women, that she was

jealous of other women's possessions and that she expected the petitioner to buy many things for her and her family.

The petitioner describes two incidents where his former wife hit and pushed him during arguments about the petitioner driving his former wife to and from New Jersey to visit her family. The petitioner explains that when he did not comply with his former wife's wishes, she would lie on the floor and hit herself until he begged her to stop. The petitioner further states that his wife often threatened to divorce him and withdraw her immigration petition filed on his behalf.

The petitioner reports that in 2002, his former wife had a miscarriage and blamed him for her loss of the baby. The petitioner explains that his wife then began fertility treatments. When the doctor informed the former couple that his former wife's eggs were not viable and they should consider egg donation, the petitioner states that he was opposed, but that his former wife threatened to divorce him if he did not comply. In May 2004, the petitioner states that his former wife told him that she would have a baby through an egg donor, keep the child to herself and not give the petitioner access to the child for nine years. The petitioner explains that he then decided that he could no longer continue with his marriage.

On July 19, 2004, the petitioner states that his wife told him that she and her brothers would hurt him if he continued with the divorce. The petitioner explains that he was frightened by her threat because one of her brothers was a police officer who had a gun. The petitioner reports that he filed for a restraining order based on this threat, but his application was denied. The petitioner states that the following week, his former wife and her family came to the former couple's house, threatened that the petitioner would end up on the streets if he continued with the divorce and told him to leave the house within one hour. The petitioner reports that he called the police, who told him that he did not have to leave his house. The petitioner explains that he then found out that his former wife had called the police to try and remove his mother and sister from the former couple's house before his arrival.

According to the petitioner, his wife applied for a restraining order against him the following day and the order was granted until a hearing on September 1, 2004. The petitioner states that at the hearing the judge ordered that he could return to the former couple's house, but that he had to stay away from his former wife. The petitioner states that his former wife lied in her application for the restraining order and that he never hit her.

The relevant court documents show that the petitioner's former wife obtained an ex parte restraining order against him on July 29, 2004, which was extended after a hearing on September 1, 2004 until March 1, 2005. The extended order prevented the petitioner from abusing his former wife, but removed the prior order excluding the petitioner from the former couple's home. In her application for the restraining order, the petitioner's former wife stated that the petitioner physically assaulted her and threatened her by saying, "if you tell anyone about me hitting you, I will kill you."

The July 28, 2004 police incident report indicates that the petitioner stated that his wife and her brother had threatened him and told him that he had to leave the former couple's house. The report states that the petitioner "wanted to know what his rights were" and that the reporting officer told him that he could not be made to leave the house because it was owned by both him and his wife. The report conveys that the petitioner informed the officers that there was another problem at his home, but that when the officers arrived at the petitioner's house, other officers were already there. The report references the related incident report, but the petitioner did not submit a copy of that report.

The petitioner's mother, brother, priest and friends all indicate that the petitioner's former wife mistreated him. The petitioner's mother states that his former wife frequently insulted, threatened, blamed and yelled and screamed at the petitioner. The petitioner's brother, [REDACTED] states that he "heard verbal abuse and threats about divorce and getting him in trouble with immigration" and that he once witnessed the petitioner's former wife punch the petitioner on his shoulder while calling him a derogatory name when the petitioner picked her up from visiting her family before she wanted to return. The petitioner's elder brother, [REDACTED] also describes several family conflicts and states that while the former couple was married, he "witnessed her being mean and cruel, verbally and emotionally abusing" the petitioner. The petitioner's friend, [REDACTED] states that he once overheard the petitioner's former wife screaming at the petitioner and calling him derogatory names. The petitioner's friend, [REDACTED] states that he once heard the petitioner's former wife yelling at the petitioner because he could not leave work to take her Christmas shopping.

[REDACTED] describes examples of the mistreatment of the petitioner's former wife, as told to him by the petitioner. However, [REDACTED] does not state the manner or length of his discussions with the petitioner and his letter is printed on letterhead stationery of the Saint Stefanos Greek Orthodox Church in Saint Petersburg, Florida. The record shows that the petitioner lived in New Jersey and Connecticut during his marriage. [REDACTED] does not explain how he counseled the petitioner or was able to observe the effects of the purported abuse of the petitioner's former wife despite this considerable geographic distance.

The testimonial evidence indicates that the petitioner's wife mistreated him and that their marriage ultimately ended over their disagreement about the use of an egg donor to conceive a child. The documentary evidence shows that the petitioner's application for a restraining order against his former wife was denied, but that his former wife obtained a restraining order against him that was modified and extended for six months after a hearing. The record does not establish that the behavior of the petitioner's former wife rose to the level of battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not demonstrated that his former wife battered or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

On appeal, counsel cites unpublished decisions of the AAO, which found that the petitioner had established extreme cruelty. Counsel claims that the facts in those cases are analogous to the petitioner's case and that their "authority makes clear that the Director misapplied the extreme-cruelty

standard relevant to self-petitioning alien spouses.” Counsel reliance on the AAO decisions is misguided. None of the cited decisions are before us and we cannot assume that the pertinent facts are analogous to those in this case. Moreover, pursuant to 8 C.F.R. § 103.4(c), designated and published decisions of the AAO are binding precedent on all Service employees in the administration of the Act. However, unpublished decisions have no such precedential value.

The petitioner failed to demonstrate his eligibility for immigrant classification pursuant to section 204(a)(1)(B)(ii) 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.