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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted]
EAC 04 145 50759

Office: VERMONT SERVICE CENTER

Date: JUL 03 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:

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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

The director denied the petition, finding that the petitioner failed to establish that his wife battered or subjected him to extreme cruelty during their marriage.

On appeal, counsel submits a 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 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 Guatemala who entered the United States without inspection in December 1996. On April 10, 2001, the petitioner married [REDACTED], a U.S. citizen, in Nevada. On April 13, 2004, the petitioner filed this Form I-360. On November 18, 2004, the director issued a notice requesting the petitioner to submit additional evidence that [REDACTED] had battered or subjected him to extreme cruelty. The petitioner submitted further evidence on January 18, 2005. On July 13, 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 [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage. On appeal, counsel asserts that [REDACTED]'s behavior exhibited the cycle of violence typical of a domestic abuse situation. We concur with the director's conclusion and find that counsel's claims on appeal do not overcome the ground for denial. Nonetheless, the case 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 submitted three written testimonials in support of his claim that [REDACTED] battered and subjected him to extreme cruelty. In his own declaration, the petitioner stated that [REDACTED] did not work and did not appreciate the fact that he worked two jobs to support them. The petitioner reports that in approximately May 2002, [REDACTED] left him for a month. The petitioner explains that they reconciled, but that [REDACTED] soon demanded that he make more money to support her habits, called him derogatory names in front of his friends and relatives, threatened to call the police to have him arrested and said she would not participate in his "green card" process. The petitioner states that when he did not listen to her demands for money, [REDACTED] would throw things at him. The petitioner states that when [REDACTED] became pregnant, she told him the baby was not his and told his friends and neighbors that he was not man enough to make babies. The petitioner reports feeling humiliated,

distressed, depressed and socially isolated by [REDACTED] behavior and states that he eventually left her. Afterwards, the petitioner states that [REDACTED] had the baby, but did not register the name of the father on the birth certificate and prevented the petitioner from conducting a paternity test. The petitioner submitted a copy of the birth certificate of a child that was born to [REDACTED] on June 11, 2002 that does not state the father of the child.

The petitioner also submitted statements from two of his friends. [REDACTED] states that he would often visit the former couple at their home and observed [REDACTED] screaming insults at the petitioner. [REDACTED] states that on many occasions he noticed that [REDACTED] would act harsh, violent and aggressive with the petitioner. [REDACTED] states that on one occasion, [REDACTED] screamed and threw a glass at the petitioner.

We concur with the director's determination that these documents do not establish the requisite battery or extreme cruelty and we do not repeat his discussion here. 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 states that [REDACTED] took all of their joint documentation accumulated during their marriage and counsel asserts that this statement explains why the petitioner "is lacking if any [sic] in documentary evidence." Yet the director determined (and we concur) that the petitioner established his joint residence and good faith marriage with [REDACTED]. Contrary to counsel's assertion, the petitioner's statement does not explain the lack of corroborative documentation regarding [REDACTED] alleged battery and extreme cruelty. The petitioner submitted no evidence, for example, that he called the police, sought an order of protection, or took other legal steps to end [REDACTED] alleged abuse; that he sought shelter from her alleged abuse; that he sought assistance from clergy or social service agencies; or that he ever sought medical or psychological treatment for the effects of [REDACTED] alleged abuse. 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 [REDACTED] subjected the petitioner to battery or extreme cruelty, 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.