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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
EAC 04 126 53058

Date: JUL 21 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 U.S. citizen wife battered or subjected him to extreme cruelty.

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 Guyana who entered the United States on February 15, 2000 as a nonimmigrant visitor (B-2). On May 15, 2000, the petitioner married [REDACTED], a U.S. citizen, in Maryland. Ms. [REDACTED] filed a Form I-130 petition for alien relative on the petitioner's behalf, which was denied on August 5, 2002. The Board of Immigration Appeals affirmed the denial of Ms. [REDACTED] I-130 petition on June 30, 2003. On July 24, 2003, the petitioner was served with a Notice to Appear for removal proceedings, charging him with violating sections 237(a)(1)(B) and 237(a)(1)(A) of the Act. The petitioner's next hearing at the Baltimore Immigration Court is scheduled for October 16, 2006. The petitioner filed this Form I-360 on March 22, 2004. On November 1, 2004, the director requested additional evidence of, *inter alia*, Ms. [REDACTED] battery or extreme cruelty. Counsel requested and was granted additional time to respond and on March 15, 2005 submitted further evidence. On October 3, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty. The petitioner, through counsel, timely appealed.

On appeal, counsel contends that the evidence submitted below "provided sufficient and highly probative evidence" of extreme cruelty. We concur with the director's conclusion and find that counsel's claims on appeal do not overcome the ground for denial. 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).

Battery or Extreme Cruelty

As evidence of battery or extreme cruelty, the petitioner initially submitted copies of his own and Ms. [REDACTED] letters written in support of the appeal from the denial of Ms. [REDACTED]'s Form I-130 petition and the birth certificate of Ms. [REDACTED] child. In his September 21, 2002 letter, the petitioner states that after their marriage, Ms. [REDACTED] complained about everything and did not like his friends or his cooking. The petitioner reports that he overheard his wife telling another man that she did not know if he or the petitioner was the father of her baby. In her letter dated August 20, 2002, Ms. [REDACTED]

confirms that she did not like the petitioner's friends and that the former couple argued constantly. Ms. [REDACTED] states that she moved into her own apartment and became pregnant as a result of an extramarital affair. The birth certificate shows that Ms. [REDACTED]'s son was born on October 14, 2001 and does not identify the child's father.

In response to the director's request for further evidence, the petitioner submitted his own declaration and supporting declarations of Pastor [REDACTED] and [REDACTED].¹ In his declaration, the petitioner states that towards the end of 2000 or the beginning of 2001, Ms. [REDACTED] threw temper tantrums about his cooking, cleaning and almost anything he did. He states that Ms. [REDACTED] became pregnant in February 2001, told him that the baby was not his, and abandoned him. He reports that he has changed from being a happy, talkative and outgoing person to someone who is depressed and rarely socializes.

Pastor [REDACTED] states that he counseled the petitioner and Ms. [REDACTED] beginning in late 2000 or early 2001. He reports that the petitioner became severely depressed "after he learned of [Ms. [REDACTED]] pregnancy and experienced her abandonment and refusal to reconcile." Pastor [REDACTED] states that the petitioner "went into a severe depression" after Ms. [REDACTED] birth. Ms. [REDACTED] states that she has known the petitioner for nearly half of her life and that he and Ms. [REDACTED] lived in her basement apartment. Ms. [REDACTED] states that the petitioner "went into a full scale depression" when Ms. [REDACTED] son was born.

We concur with the director's determination that the evidence submitted below does not establish the requisite battery or extreme cruelty and we do not repeat his discussion here. The present record does not establish that Ms. [REDACTED] actions rose to the level of battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The evidence does not demonstrate that Ms. [REDACTED] ever threatened the petitioner with violence or that her complaints, extramarital affair, resultant pregnancy and abandonment of the petitioner constituted psychological abuse or were part of an overall pattern of domestic violence.

The present record fails to establish that Ms. [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage, 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.

¹ On appeal, counsel references a "social worker's report" by "social worker [REDACTED]" that was purportedly submitted as an attachment to a letter from the petitioner dated March 31, 2005. On June 22, 2006 the AAO notified counsel that the record did not contain a March 31, 2005 letter from the petitioner or a social worker's report and requested counsel to send the documents within five business days if he wanted the evidence to be considered on appeal. To date, over three weeks later, the AAO has received no response from counsel.

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.