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**U.S. Citizenship  
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FILE:

[REDACTED]  
EAC 02 271 53258

Office: VERMONT SERVICE CENTER

Date: **JUL 21 2006**

IN RE:

Petitioner: [REDACTED]

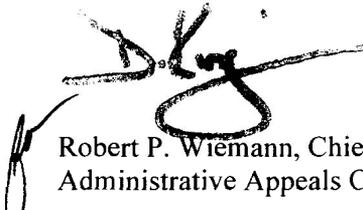
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 or that he entered into their marriage in good faith.

The petitioner 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:

*(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.

\* \* \*

*(ix) Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner in this case is a native and citizen of Pakistan who entered the United States on November 25, 1999 without inspection. On April 16, 2001, the petitioner married [REDACTED] a U.S. citizen, in Wisconsin. On August 22, 2002, the petitioner filed this Form I-360. On August 13, 2003, the director requested evidence of battery or extreme cruelty. The petitioner requested and was granted additional time to respond and on March 5, 2004 submitted testimonial evidence. On September 9, 2004, the director requested, *inter alia*, additional evidence of battery or extreme cruelty and the petitioner's good faith marriage to Ms. [REDACTED]. The petitioner requested and was granted additional time to respond and on January 3, 2005, submitted a letter. On November 16, 2005, the director denied the petition because the record failed to establish that Ms. [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage or that the petitioner entered into their marriage in good faith. The petitioner timely appealed.

On his Form I-290B, the petitioner states that he disagrees with the reasons why his petition was denied and states that he will send additional information within 30 days. The petitioner dated his appeal

December 12, 2005. To date, over seven months later, the AAO has received nothing further from the petitioner. Although we concur with the director's conclusion, the petition will nonetheless 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 initially submitted no evidence of battery or extreme cruelty. In response to the director's August 13, 2003 notice, the petitioner submitted letters from himself and his friend, [REDACTED]. In his March 3, 2004 letter, the petitioner states that Ms. [REDACTED] often humiliated him. For example, the petitioner describes one occasion when Ms. [REDACTED] suddenly started screaming and insulting the petitioner in front of a bookkeeper. The petitioner states that on another occasion when they were walking down the street, Ms. [REDACTED] addressed him with an expletive and told him to leave when she saw her friends coming because she did not want anyone to know that they were together. The petitioner also states that Ms. [REDACTED] never told her parents that they were married. The petitioner reports feeling depressed and having trouble eating, sleeping and concentrating because of Ms. [REDACTED]'s behavior.

Mr. [REDACTED] explains that he noticed that the petitioner became withdrawn shortly after his marriage and told Mr. [REDACTED] that he felt that Ms. [REDACTED] was ashamed of him. Mr. [REDACTED] describes Ms. [REDACTED]'s mistreatment of the petitioner, but does not indicate that he ever personally observed any incidents of abuse.

In response to the director's September 9, 2004 request for additional evidence, the petitioner submitted his letter dated December 30, 2004. The petitioner reiterates his feelings of rejection, humiliation and loss of self-esteem. He states that he sought counseling at a clinic which referred him to a doctor for further help, but the petitioner submits no corroborative documentation of his clinic visit or doctor's treatment.

We concur with the director's determination that the evidence does not establish the requisite battery or extreme cruelty and we do not repeat her discussion here. The record does not demonstrate that Ms. [REDACTED]'s behavior 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)(2)(iv). The evidence does not indicate that Ms. [REDACTED] ever threatened the petitioner with violence, that her mistreatment rose to the level of psychological abuse, or that her nonviolent actions were part of an overall pattern of violence. In addition, the petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv), such as documentation that he sought assistance from the police, courts, or medical or social service agency personnel. 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 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.

*Entry into the Marriage in Good Faith*

As evidence of his good faith marriage to Ms. [REDACTED] the petitioner submitted copies of utilities and bank statements and copies of the Form I-864 affidavit of support filed by Ms. [REDACTED] on his behalf. The petitioner submitted copies of two electricity bills and two telephone bills that are jointly addressed to him and Ms. [REDACTED] at the same address. The petitioner also submitted a bank statement indicating that he and Ms. [REDACTED] had a joint account, but the statement is dated after the petitioner reports that he and Ms. [REDACTED] separated. The remaining telephone bill and bank statement are addressed to the petitioner individually.

In response to the director's September 9, 2004 request for additional evidence, the petitioner submitted his December 30, 2004 letter in which he states, "I entered into the marriage because of love and in good faith of anticipation of our future [sic] together." The petitioner does not describe how he met Ms. [REDACTED] their courtship, wedding or any of their shared experiences apart from Ms. [REDACTED] alleged abuse. The petitioner states that he and Ms. [REDACTED] had no insurance policies together or any other joint documents apart from the utilities bills and bank statement he previously submitted.

We concur with the director's determination that the record does not establish that the petitioner entered into marriage with Ms. [REDACTED] in good faith and we do not repeat her discussion here. The petitioner states that he has no further documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), but does not explain that, for example, Ms. [REDACTED]'s abuse prevented the former couple from obtaining joint assets and liabilities. The petitioner's own testimony provides no probative details regarding his alleged good faith in marrying Ms. [REDACTED]. Accordingly, the present record fails to establish the petitioner's good faith marriage to Ms. [REDACTED] as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The present record does not establish the petitioner's eligibility for immigrant classification under 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.