U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

B9

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 2 0 2006
EAC 05 112 52967

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.

Marie Johnson

2 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 is a native and citizen of India who entered the United States as a nonimmigrant religious worker (R-1) on February 5, 1998. The petitioner filed a Form I-360 petition, seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien subjected to battery or extreme cruelty by his United States citizen spouse.

The director denied the petition on November 3, 2005, finding that the petitioner had failed to establish that he had been battered or subjected to extreme cruelty perpetrated by the his spouse.

On appeal, the petitioner submits additional evidence.

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 he or she demonstrates that the marriage to the United States citizen spouse was entered into 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 spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

> A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided . . . with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has

been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The 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 evidence will be considered.

Battery or Extreme Cruelty

The first issue to be addressed is whether the petitioner established that his United States citizen spouse subjected the petitioner or his children to battery or extreme cruelty. In his affidavit dated March 7, 2005, the petitioner said "all of the sudden, after three years of [married] life, strange things started to happen, and I was astonished to learn that my wife was into drug intoxication."[1] He added, "she used to abuse my credit cards and money. She was arrested by the police numerous times on account of possession of narcotics . . . Whenever I asked her about what was going wrong, she used to threaten and abuse me, she always used to say that she will drag me to court. Some of our neighbors and friends also saw the fight between me and my wife. At one time she was trying to hit me and was stopped by one of our neighbors."

The petitioner submitted several affidavits written by friends and his brother. However, their testimony is too vague to establish abuse. [redacted] wrote that she and her husband saw the petitioner and his wife "fight couple of times" and once saw [redacted] try to hit the petitioner. [redacted] wrote that he walked in on [redacted] engaging in extramarital sexual activity. [redacted] wrote that the petitioner and his wife, [redacted], came to his house for dinner but they cut their visit short because [redacted] "started showing off . . . and even abused him." [redacted] wrote that he saw and heard [redacted] insulting and abusing the petitioner.

The petitioner submitted [redacted] criminal records. It is noted that none of these records relate to the petitioner or involve him in any way.

---

[1] According to documentation submitted by the petitioner, [redacted] pled guilty to possession of narcotics in 1999 and in 2001, pled nolo contendere to a violation of PC 647(a)– disorderly conduct/lewd act.

While the affidavits indicate that had a substance abuse problem, the present record does not establish that he was battered or subjected to extreme cruelty by as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulations at 8 C.F.R. § 204.2(c)(1)(vi), 204.2(c)(2)(iv).

Entry into the Marriage in Good Faith

Beyond the director's decision, the present record fails to demonstrate that the petitioner entered into his marriage with in good faith. In his affidavit, the petitioner said he met in March of 2000 and months, she proposed to him. They wed in June 2000. The petitioner does not provide a detailed description of the couple's courtship, wedding, shared residence or any shared experiences, apart from alleged abuse. The affidavits of the petitioner's friends do not discuss the petitioner's intentions and feelings, as observed by them, during his courtship and the early stages of his marriage with Accordingly, the present record does not establish that the petitioner entered into her marriage with in good faith, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii).

The record contains some evidence that the petitioner and shared some responsibilities. It is noted however, that their 2002 joint tax return was signed in 2004 calling into question whether or not the return was filed with the Internal Revenue Service. The petitioner submitted copies of statements of a joint bank account; however, there is no evidence that ever drew on the account. The petitioner submitted credit card statements that reflected no activity except for late payment charges. The petitioner submitted a phone disconnect notice.

The petitioner indicated on the Form I-360 that he resided with from June 2000 until November 2005. He also said that was in jail in November 2004, hence, she was unavailable for an immigration interview. On remand, the director should revisit the issue of whether the petitioner established that he entered into the marriage in good faith.

The petitioner has failed to establish her eligibility for the classification sought. However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

> *Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Consequently, the case must be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her 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.