



U.S. Citizenship
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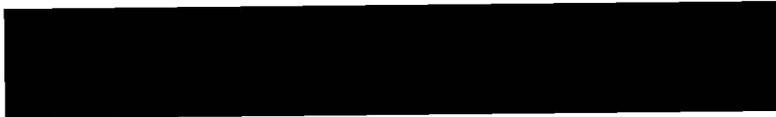
Office: VERMONT SERVICE CENTER

Date: **MAR 30 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:



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, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 43-year old native and citizen of the People's Republic of China who is 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 the battered spouse of a United States citizen. The petitioner filed his Form I-360 on July 26, 2004.

Finding the evidence submitted with the Form I-360 insufficient to establish that the petitioner's former spouse subjected him to battery or extreme cruelty, that he resided with his former spouse and that he entered into their marriage in good faith, on March 2, 2005, the director issued a notice requesting the petitioner to submit evidence (RFE) that his former spouse subjected him to battery or extreme cruelty, that he resided with his former spouse and that he entered into their marriage in good faith. The petitioner, through counsel, requested an additional 60 days to respond to the notice. The director granted the petitioner a 60-day extension to respond to the RFE. The petitioner submitted additional evidence in response to the RFE, including his affidavit dated June 21, 2005, his uncle's affidavit and a letter written by the petitioner's friend [REDACTED]

On August 15, 2005, the director denied the petition because the record failed to establish that the petitioner had been battered by, or the subject of extreme cruelty perpetrated by, his U.S. citizen spouse.

On appeal, counsel for the petitioner submits additional evidence, including the petitioner's affidavit dated September 29, 2005.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The 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)(vi) states, in pertinent part:

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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

According to the evidence on the record, the petitioner wed [REDACTED] in China on December 31, 1990 and entered the United States as an F-2 nonimmigrant on May 7, 1992. He changed his status to that of an F-1 nonimmigrant student on December 31, 1992. On June 20, 1993, the petitioner divorced his first

wife, [REDACTED] in China. The petitioner wed United States citizen [REDACTED] on April 12, 2001 in Brooklyn, New York.

The issue to be addressed in this proceeding is whether the petitioner established that he has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that he has been abused by, or the subject of extreme cruelty perpetrated by, his citizen spouse, the director asked him to submit additional evidence. The director listed evidence the petitioner could submit to establish battery or extreme mental cruelty.

The evidence in the record relating to abuse consists of the following:

- A medical report prepared by [REDACTED] on May 24, 2005.
- The petitioner's statement dated June 21, 2005.
- The petitioner's statement dated September 29, 2005.
- Affidavits written by the petitioner's friends, [REDACTED] and [REDACTED]
- An affidavit written by the petitioner's uncle.
- A letter written by the petitioner's friend [REDACTED]

The evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen spouse. The petitioner asserts that his wife's behavior is tantamount to extreme mental cruelty. The petitioner states that his wife had an extramarital affair during their marriage. He said that he and his wife argued. He said that he was shocked when he was served with divorce papers because he had not anticipated the divorce. On appeal, the petitioner stated that after his wife initiated divorce proceedings, she asked him for money and threatened to not proceed with immigration papers if he did not comply. The petitioner's uncle stated that the petitioner was "hurt badly emotionally" after his wife cheated and had divorce papers served on the petitioner. The petitioner's friends state that they noticed a marked change in the petitioner's mood after he was served with divorce papers. Another friend asserted that the petitioner's wife's "greedy and selfish personality killed the marriage . . . and [he] believes that [the petitioner's wife] is totally responsible for [the petitioner's] mental sufferings and his unhealable psychological scars." The medical report indicates that the petitioner suffers from "major depressive disorder, single episode, moderate." The psychiatrist stated that it was his opinion "that there is a causal relationship between [the petitioner's] current depression and the unfortunate broken marriage."

The conduct described in the evidence does not rise to the level of abuse or extreme mental cruelty. Although the petitioner established that he suffered emotionally due to the demise of his marriage, he failed to establish that his wife's treatment of him constitutes extreme mental cruelty.

Accordingly, the petitioner has not established that he has been battered by, or subjected to extreme cruelty by, his U.S. citizen spouse. He is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, and his self-petition must be denied.

We concur with the director's determination that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his former spouse during their marriage. Counsel's claims and the evidence submitted do not overcome this basis for denial and the petition may not be approved. However, the case will be remanded because the director failed to issue a Notice of Intent to Deny (NOID).

The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petition, 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.

In this case, the director denied the petition without first issuing a NOID. Consequently, the case must be remanded for issuance of an NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of his/her case.

On remand, the director should also consider whether the petitioner established that he resided with his citizen spouse during the marriage.

The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the petitioner and counsel. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always in these proceedings, the burden of proof rests solely 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 this decision.