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U.S. Citizenship  
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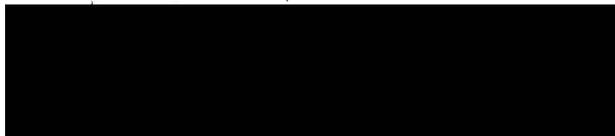
Office: VERMONT SERVICE CENTER

Date: NOV 22 2006

EAC 05 004 52669

IN RE:

Petitioner:



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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 an 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 because the petitioner did not establish that her husband battered or subjected her or either of her children to battery or extreme cruelty.

On appeal, the petitioner asserts that her husband's conduct constitutes extreme cruelty.

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 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 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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which 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 further explicated 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nigeria who entered the United States on August 17, 1999 as a nonimmigrant visitor (B-2). On May 3, 2001, the petitioner married D-B-<sup>1</sup>, a U.S. citizen, in Texas. On September 29, 2004, the petitioner filed the instant Form I-360. On July 18, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner responded with further evidence. On January 11, 2006, the director denied the petition for lack of the requisite battery or extreme cruelty.

On appeal, the petitioner states, "the Service failed to see the pattern of conduct of my husband, [D-B-], which I believe constitutes extreme cruelty." On her Form I-290B, the petitioner indicated that she would send a brief and/or evidence to the AAO within 30 days. The petitioner dated her appeal February 8, 2006. To date, over nine months later, the AAO has received nothing further from the petitioner. We concur with the director's determination. Nonetheless, the petition will be remanded because the director denied the case without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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<sup>1</sup> Name withheld to protect individual's identity.

*Battery or Extreme Cruelty*

The petitioner submitted the following evidence relevant to her claim of extreme cruelty:

- Her own declaration dated September 25, 2004;
- Documentation that her husband was convicted of a misdemeanor theft offense on September 27, 1999;
- Criminal court and local police records showing that the petitioner was convicted of three counts of falsely reporting her husband's battery against her to a police officer in January and February 2003;
- Support letter from the petitioner's pastor, [REDACTED];
- Support letter from the petitioner's roommate [REDACTED];
- Medical records of the petitioner's daughter [REDACTED];
- A letter from the petitioner's physician, [REDACTED] dated October 19, 2005;
- The declaration of the petitioner's friend and fellow church member, [REDACTED].

In her declaration, the petitioner states that during their marriage, her husband sold drugs, impregnated another woman and demanded that the petitioner support him and his baby, was jailed for a gang shooting, refused to care for the petitioner's daughter whom her husband had legitimated, and had extramarital affairs. The petitioner states that in October 2002 when her husband was living in Houston and she was living in California, her husband told her he was going to take his baby away from its mother in Houston and move in with the petitioner. When the petitioner asked his parents to intervene, the petitioner states "[My husband] told me that he would take care of me if I was trouble to him. I knew this meant he would use his gun if he thought it was necessary."

The petitioner reports that she contacted a shelter for battered women and a staff person told her that she should get a protection order against her husband, but that she would have to have a police report in order to obtain the protection order. The petitioner states:

I made two false reports, alleging that he hit me on January 20 and February 5, 2003, when he was in Houston. I thought I needed the police reports to get a court protective order. I was wrong. . . . When contacted by the San Jose police, I admitted that I gave false information to the police, and gave to the police a written confession about my conduct, explaining to the police my fears about [my husband].

The Superior Court of California, Santa Clara County criminal record and complaint, show that the petitioner was convicted of three counts of falsely reporting a crime in violation of section 148.5(a) of the California Penal Code, by falsely reporting a felony spousal battery offense to a peace officer on January 20, February 5 and February 6, 2003 (Case Number [REDACTED]). The corresponding Campbell, California Police Department report states that the petitioner filed three false reports of domestic violence against her husband while he was in Texas and that the petitioner eventually confessed to making the false statements. The police report states that the petitioner denied recanting

her original statements because her husband was arrested and charged with domestic violence or because her husband had pressured her. The conviction record and police report greatly detract from the credibility of the petitioner's claims regarding her husband's alleged extreme cruelty.

The supporting statements of the petitioner's friends and pastor also fail to corroborate her claim of extreme cruelty. [REDACTED] states that the petitioner sought counseling with him and told him "how she feared for her life and how she believes she was emotionally and financially exploited, [REDACTED] provides no detailed, probative information regarding the conduct of the petitioner's husband. [REDACTED] states that the petitioner told him about her false police reports and marital problems, reports that the petitioner suffers from migraine headaches and that he and other church members gave money to help the petitioner. Yet [REDACTED] provides no further, probative information that would indicate that the petitioner's husband subjected her to extreme cruelty.

[REDACTED] reports that, when he lived with her and the petitioner, the petitioner's husband spent the day drinking beer, smoking and saying bad things to the petitioner. [REDACTED] opines that the petitioner's husband "was using [the petitioner] like a work horse and abusing her," but she does not describe any specific incidents of abuse that she witnessed. [REDACTED] further reports that the petitioner's husband abandoned the petitioner and moved back to Texas; that the petitioner had severe headaches, was moody and constantly depressed; and that on February 6, 2003, [REDACTED] was present when the petitioner fell down the stairs and falsely told a policeman that her husband had been at their apartment. The testimony of [REDACTED] indicates that the petitioner was adversely affected by her marriage, but their statements do not establish that the petitioner's husband subjected her or either of her children to extreme cruelty.

The remaining documentary evidence also fails to support the petitioner's claims. The criminal record of the petitioner's husband shows that he was convicted of theft in 1999, but does not indicate that the petitioner was the victim of, or was otherwise adversely affected by, this crime. Moreover, the petitioner states that she did not meet her husband until 2001, two years after his theft conviction. The medical records of the petitioner's daughter state that she suffers from asthma, eczema, recurrent ear infections and sickle cell trait, but the records do not indicate that any of these conditions were caused or exacerbated by the conduct of the petitioner's husband. [REDACTED] states that the petitioner suffers from "classic migraine syndrome which she states coincided with the stress from domestic problems from her husband." However, [REDACTED] does not state his clinical impression that the petitioner's migraines were caused or exacerbated by her husband's abuse, rather than the stress caused by their marital problems, and [REDACTED] offers no other probative information that would support the petitioner's claim.

The present record fails to establish that the petitioner's husband battered or subjected her or either of her children to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) 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 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.