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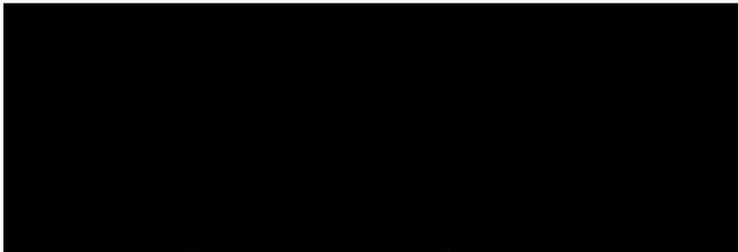
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: SEP 01 2006  
EAC 05 204 53200

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, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 Immigration and Nationality Act (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 and 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 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 the alien's child 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 Colombia who states on the Form I-360 that he entered the United States on August 1, 1987. On January 27, 1995, the petitioner married L-C-,<sup>1</sup> a U.S. citizen, in New York City. On July 14, 2005, the petitioner filed this Form I-360. The petitioner and his former wife were divorced on September 7, 2005. On September 21, 2005, the director requested additional evidence of, *inter alia*, his former wife's battery or extreme cruelty. The petitioner submitted further evidence on November 14, 2005. On December 27, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty.

On the Form I-290B, counsel stated that he would send a brief and/or evidence to the AAO within 30 days. Counsel dated the appeal January 20, 2006. On August 15, 2006, the AAO notified counsel that it had received nothing further and asked him to send a copy of any brief and/or evidence submitted. That same day, counsel notified the AAO that he did not file a brief and/or evidence in support of the appeal as he indicated on the Form I-290B. Accordingly, the appeal will be adjudicated based on the evidence submitted below and with the Form I-290B, filed on January 26, 2006.

We concur with the director's conclusion and find that counsel's claims and the evidence submitted 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 a letter addressed to his former wife from the New York City Criminal Justice Agency informing her of her required court appearance on October 17, 2002. The letter references a "CJA Case number," but the petitioner

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

submitted no evidence that this case related to an incident of battery or extreme cruelty inflicted upon him or his child by his former wife. The petitioner also submitted a copy of a letter dated October 3, 2002 and addressed to him from the New York City Police Department. This letter states that the Department responded to a call regarding a domestic dispute in the petitioner's home on September 30, 2002 and provides contact information for Domestic Violence Officers and the Domestic Violence Hotline. The letter does not, however, indicate that the referenced domestic dispute involved the petitioner's former wife's battery or extreme cruelty.

In response to the director's September 21, 2005 Request for Evidence (RFE), the petitioner submitted a typewritten, undated statement in which he reports that on September 1, 1995, he came home from work and found his former wife in bed with another man. He states that the man got a knife and attacked him, but that he defended himself, the man was injured and the petitioner was arrested when the police came. The petitioner states that after an investigation, he was released and not charged with any offense. The petitioner reports that he and his former wife reconciled in 1997, but that they constantly fought because of his former wife's infidelity. The petitioner states, "she always attacked me, she got physic with me all the time." The petitioner reports that he again reconciled with his wife, but that in 2001 he discovered that she had been unfaithful again. When his former wife left their home with their son, the petitioner called the police and his former wife came back, but he states: "we fight all the time, we had no respect to [sic] each other and she insult me with bad words, one day she attack me and bit me in the shoulder and I went to the police again and she was arrested, but I did not make [sic] charges because of my son." The petitioner reports that his former wife then went to Pennsylvania and he found out that she was pregnant with their second child.

The petitioner submitted no other evidence to support and corroborate his statements. On appeal, the petitioner submits a second, handwritten statement in which he repeats his description of his wife's alleged battery and extreme cruelty. The petitioner adds that his wife was living with another man in Pennsylvania. On appeal, the petitioner also submits support letters from two friends. Neither of these individuals discusses the petitioner's former wife's maltreatment of him. In his January 20, 2006 letter, counsel states that the petitioner's two friends "are in fact witness[es] and will be willing to certify this facts [sic] if you call them at any time." However, the burden of proof in these proceedings rests entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

The petitioner provided no evidence or detailed testimony to show that the New York City Criminal Justice Agency letter addressed to his former wife and the New York City Police Department letter addressed to himself correspond to incidents of his former wife's battery or extreme cruelty against him or his son. The petitioner states that he called the police after his former wife disappeared for two weeks with their son, but he does not state the specific date of this incident or provide evidence of the police call, response or report and he submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). 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 establish that the petitioner's former wife battered or subjected him or his child 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 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.