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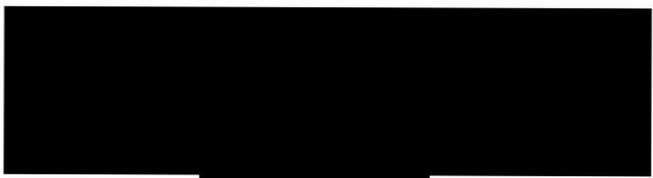
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: SEP 07 2006
EAC 05 161 52629

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 preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen. The director denied the petition on December 21, 2005, finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse. The petitioner filed a timely appeal on January 23, 2006.

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 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)(2)(iv) states:

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 abused 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 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.

The record reflects that petitioner married [REDACTED], a United States citizen, on October 1, 2002 in Ringgold, Georgia. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on April 8, 2003. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The petitioner's spouse withdrew the Form I-130 petition on April 5, 2005 and the Form I-485 application was denied accordingly.

The petitioner filed the instant Form I-360 self-petition on May 12, 2005, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his spouse during their marriage. With his initial submission, the petitioner submitted a personal statement, a copy of his marriage certificate, documents related to his divorce from his citizen spouse, two affidavits, a Petition for Temporary Protective Order issued against his spouse, and evidence related to his good moral character, his good faith marriage, and his residence with his spouse.

As it relates to his claim of abuse, in his initial statement the petitioner claimed that his brother-in-law did not like him because he was black. Additionally, the petitioner claimed that his spouse sold their marital property and after filing for divorce would call the petitioner and threaten and harass him about his "race, religion, [and] social life." Finally, the petitioner described an incident in which his spouse came to his apartment, punched him and pushed him against the wall. The petitioner claimed that he talked to an officer who advised him to go to the courthouse and ask for help. Despite the petitioner's claim that he spoke to an officer, the record contains no police report regarding this incident. Accordingly, in his request for evidence dated August 22, 2005, the director requested the petitioner to submit a police report and evidence regarding the final outcome of the temporary protective order, as well as an explanation as to why the petitioner waited nearly one month after the incident in order to file the protective order.

Regarding the two affidavits submitted with the petitioner's initial filing, the first letter, written by [REDACTED] indicates that Ms. [REDACTED] was aware of "some problems" between the petitioner and his spouse, but that they would always communicate and work them out. The second letter, written by [REDACTED] indicates that on several occasions, she witnessed "domestic differences" between the petitioner and his spouse. Ms. [REDACTED] also states that the petitioner's spouse "made repeated phone calls" to the petitioner's workplace, "caused a scene several times" and that she was "rude and accusing." In his request for evidence, the director noted the lack of information regarding abuse in which to base a finding of battery and extreme cruelty and that the statements provided on the petitioner's behalf did not give "sufficient detail to support a finding of battery or extreme cruelty."

The petitioner responded to the director's request on October 8, 2005 and submitted a second personal statement, his final divorce decree, the order dismissing the temporary protective order, two police reports, two affidavits, past due notices and evidence related to the aforementioned Form I-130 petition and Form I-485 application. In the statement provided by the petitioner in response to the director's request for evidence, the petitioner claimed that his spouse would call him names, threaten and curse him and his friends, would try to isolate him from his friends, and tried to control their finances. Further, the petitioner claimed that his spouse suffered from Bipolar Disorder, had an affair, and got pregnant. The petitioner also submitted new letters from [REDACTED] and [REDACTED] with new claims regarding the alleged abuse. In her second letter, Ms. [REDACTED] asserted that the petitioner's spouse would "yell and scream," "call him names and use fowl [sic] language." While Ms. [REDACTED] also indicated that the petitioner's spouse "may push him or hit him out of anger," she does not provide any details regarding a specific event or occurrence in which the petitioner was hit or pushed by his spouse. In her second letter, Ms. [REDACTED] reiterates her previous statement regarding the claim that the petitioner's spouse would call his place of employment and was "rude and obscene."

We note that despite the petitioner's claim that he was isolated from his friends by his spouse, both the petitioner's statements and the letters from his friends contradict this claim. The petitioner's statement indicates that he would call his friends for help and the letter from Ms. [REDACTED] indicates that they "frequently go out to dinner together and visit with other friends." Similarly, as it relates to the petitioner's claim that his spouse "was trying to get control over our finances," the record contains numerous checks written by the petitioner and evidence of a Bank of America Visa account in the petitioner's name. Such evidence reflects that the petitioner had access to money and that his finances were not controlled by his spouse. The fact that

the petitioner and his spouse had accounts that were past due does not establish that the petitioner's spouse asserted economic control over the petitioner.

On December 21, 2005, after reviewing the evidence contained in the record, the director denied the petition without the issuance of a notice of intent to deny in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii),¹ finding that the petitioner had failed to establish that he was battered by or subjected to extreme cruelty by his spouse. In his decision, the director acknowledged the evidence in the record regarding the petitioner's spouse's Bipolar Disorder but found that the petitioner failed to demonstrate a connection between her behavior and the petitioner's claim of abuse. The director noted the fact that the police reports contained in the record were from July and August 2005, after the petitioner and his spouse had separated.²

The director also noted that the claims of abuse described by the petitioner's friends escalated from their initial statement to their subsequent claims. Accordingly, the director determined that the statements "lack sufficient detail and credibility upon which to base an approval." Finally, regarding the petitioner's claim of abuse stemming from the incident on April 12, 2005, the director noted that in the final order dismissing the temporary protective order, the judge found that the petitioner failed to establish that any "acts of family violence have occurred."

Upon review, we concur with the finding of the director that the record does not contain sufficient evidence to establish a claim of extreme cruelty. The petitioner's claim that his spouse was unfaithful is not sufficient to support a claim of battery or extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Further, the petitioner's description of one incident in which his spouse became "pissed off," does not demonstrate that the petitioner was threatened, forcefully detained, psychologically or sexually abused or exploited or that his spouse's actions were part of an overall pattern of violence. The letters submitted by the petitioner's friends regarding the alleged abuse contain general statements and because of the inconsistencies noted between their initial statements and the ones subsequently submitted, are not sufficiently reliable. The petitioner's claim regarding the specific incident of abuse was not substantiated by the court. His remaining claims that his spouse would call him names and that she cheated on him are not sufficient to establish that the petitioner has been battered by or subjected to extreme cruelty.

On appeal, the petitioner requests oral argument and submits a third letter from Ms. [REDACTED]. Regarding the petitioner's request for oral argument, we note that Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner requests oral argument in order to "relate more detail" about his case." The reasons

¹ 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-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.

² In fact, the petitioner and his spouse were divorced on May 25, 2005.

provided by the petitioner for oral argument do not identify any unique factors or issues of law to be resolved. Consequently, the request for oral argument is denied.

As it relates to the letter from Ms. [REDACTED] submitted on appeal, we note that in addition to her previous claims, in her new letter Ms. [REDACTED] now claims that the petitioner's spouse would "threaten to call Immigration." Such a claim was not previously made by the petitioner, by Ms. [REDACTED] or by Ms. [REDACTED]. Moreover, while Ms. [REDACTED] further alleges that the petitioner's spouse would "physically put her hands on [the petitioner] out of anger pushing him and hitting him," she again fails to provide details related to a specific event. Finally, while she also claims that the petitioner's spouse called the police several times, the record does not contain any police reports related to events between the petitioner and his spouse. As previously noted, the police reports contained in the record relate to the petitioner's behavior subsequent to their divorce.

Based upon the above discussion, we concur with the findings of the director that the record is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by his spouse. The findings have not been overcome on appeal. Despite our support of the director's findings, however, the director's decision cannot stand because of the director's failure to issue a notice of intent to deny to the petitioner prior to the issuance of the denial. Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a notice of intent to deny as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

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 which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.