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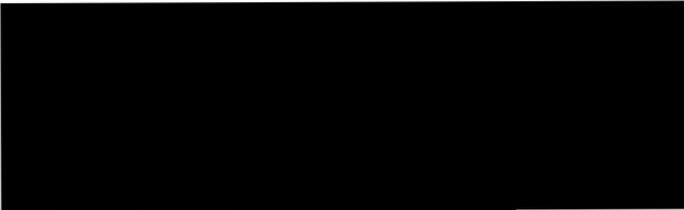
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE: [Redacted]
EAC 06 021 50091

Office: VERMONT SERVICE CENTER

Date: **JAN 18 2007**

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 appeal will be dismissed.

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 he was battered by or subjected to extreme cruelty by his citizen spouse.

The petitioner timely appealed the director's decision.

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 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 Tanzania who entered the United States on October 20, 1993 as an F-1 nonimmigrant student. The petitioner married [REDACTED] a United States citizen on October 19, 1997 in Reno, Nevada. The petitioner and [REDACTED] were divorced on January 14, 2003 in the Second Judicial District Court of the State of Nevada, Washoe County. The petitioner married [REDACTED] a U.S. citizen, in Reno, Nevada on January 20, 2003. The petitioner filed the instant Form I-360 on October 21, 2005.¹

As it relates to his claim of abuse, with his initial filing the petitioner submitted a brief declaration in which he claimed that beginning in August 2004, his spouse "threw [him] out, abused [him] emotionally and physically while living with her." The petitioner further claimed that his spouse denied him food and water, prevented him from eating African food, encouraged their neighbors not to talk to him, threatened to terminate his pending immigration petition, stopped him from using the phone and from going outside the house, seized his clothes and closed the heater in their house. Finally, the petitioner claimed that in January 2005, his spouse "threw him out of the house, changed the lock and cut [him] loose."

On January 27, 2007, the director issued a request for evidence (RFE) of *inter alia*, additional evidence to support the petitioner's claim of abuse. The petitioner responded to the director's request on March 28, 2006 by submitting the names of two individuals who witnessed the purported abuse of the petitioner and two photographs of the petitioner with a Band-Aid across his nose. The petitioner did not indicate what the two individuals purportedly witnessed and the witnesses failed to provide any statement regarding the alleged abuse. As it relates to the petitioner's photographs, the petitioner failed to provide any explanation for the photographs, the purported injury, or any other information to demonstrate that the photographs relate to abuse perpetrated against him by his spouse.

On April 29, 2006, the director issued a Notice of Intent to Deny (NOID) indicating that the evidence submitted by the petitioner was insufficient to establish a claim of abuse. The petitioner responded to the director's NOID with two separate submissions on June 2, 2006 and on June 12, 2006, respectively. The submissions consisted of three statements from acquaintances of the petitioner regarding the claimed abuse. The first statement, provided by [REDACTED] indicates that the petitioner was "always a victim of abuse" and that he "always saw him with bruises and wounds on his face." Mr. [REDACTED] indicates that when asked about his injuries, the

* Name withheld to protect individual's identity.

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¹ Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, filed in the petitioner's behalf by [REDACTED]. The petition was denied by the Service on April 12, 2002. [REDACTED] filed a second Form I-130 in the petitioner's behalf on July 17, 2002. That petition appears to remain unadjudicated. The petitioner's current spouse, [REDACTED] filed a Form I-130 on the petitioner's behalf on January 31, 2003. That petition also appears to remain unadjudicated.

petitioner indicated that his spouse beat him. Ms. [REDACTED] also describes one incident which took place at a comedy club where the petitioner's spouse "seemed to be intoxicated" and went after the petitioner in the men's room "cursing, grabbing, pushing and beating" the petitioner because he refused to give her the car keys. Finally, Mr. [REDACTED] indicates that he witnessed the petitioner's spouse at the petitioner's home with another man and that the petitioner was kicked out of his house.

The second statement, provided by Pastor [REDACTED] indicates that "on several occasions in 2005" the church provided the petitioner with "counseling, nourishment, and accommodation . . ." Pastor [REDACTED] also generally states that the petitioner told him that his spouse abused him "including psychological, verbal and physical abuse," that she "committed adultery and invited her boyfriend to live in their matrimonial home, [and] used and abused alcohol, marijuana, and other drugs. Finally, Pastor [REDACTED] indicates that the petitioner called the police on June 4, 2005 after confronting his spouse with her boyfriend.

The final statement, submitted by [REDACTED] indicates that around November 2004 he saw bruises on the petitioner's face and body and was told by the petitioner that he had been verbally, psychologically and physically abused by his spouse. Mr. [REDACTED] reiterates the previous claims regarding the petitioner's spouse's extramarital affair and the incident at the comedy club. Regarding the incident at the comedy club, Mr. [REDACTED] states generally that the petitioner and his spouse "got into a physical confrontation over an argument . . ." He does not provide a specific description of the "physical confrontation" and his statement makes it appear that while a "physical confrontation" did occur, the altercation was mutual and not evidence of the petitioner's spouse's aggression toward the petitioner.

The director denied the petition on July 27, 2006, finding that the petitioner failed to establish that he had been battered by or subjected to extreme cruelty by his spouse. In his decision, the director noted the fact that Mr. [REDACTED] and Mr. [REDACTED] described an incident that occurred after the time the petitioner indicated that he had already separated from his spouse and found their testimony to lack sufficient weight to corroborate the petitioner's claims. We withdraw this portion of the director's finding. As the statute and regulation require only that the abuse take place during the marriage, the fact that the petitioner and his spouse were no longer living together at the time of this purported incident is irrelevant. As will be discussed, we concur with the remainder of the director's findings and his ultimate conclusion that the petitioner failed to establish his claim of abuse and find that the petitioner has failed to overcome this determination on appeal.

The statements provided the petitioner contains general statements that are insufficient to establish a claim of extreme cruelty. For instance, while the petitioner claims that he was denied food and water, prevented from eating African food, using the phone, and leaving the home, the petitioner provides no specific details regarding how his spouse accomplished this control. We note that the record reflects that the petitioner was employed on a full-time basis during his marriage and also lists a separate address from his spouse on his 2004 tax returns.² Without any further discussion regarding how his spouse exerted the control claimed by the petitioner, we do not find his statement sufficient to establish a claim of extreme cruelty. It is further noted that the affidavits submitted in the petitioner's behalf do not indicate that the petitioner ever made these claims to them or mention the additional claims made by the petitioner that he was threatened because of his immigration status and that his spouse seized his clothes and turned off the heat. The remaining claims that the petitioner's spouse committed adultery and that he was thrown out of his home, while unfortunate, does not rise to the level of the

² His 2004 tax returns list his address as [REDACTED] Oakland, California while he indicated his spouse resided at the address listed on the Form I-360, [REDACTED] Los Angeles, California.

acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Moreover, the petitioner's spouse's actions, while hurtful to the petitioner, do not appear to have been part of an overall pattern of violence against the petitioner. As it relates to a claim of battery, the petitioner did not provide details regarding any specific occurrences other than the altercation at the comedy club in which the petitioner and his spouse appear to have been mutually combative. The photographs submitted by the petitioner are not supported by any description of the purported incident or explanation as to the alleged injury. While the petitioner submitted affidavits from acquaintances who claimed to have witnessed bruises on the petitioner, the record is devoid of any testimonial evidence by the petitioner himself regarding specific instances of the alleged abuse inflicted on him.

On appeal, the petitioner contests the director's finding regarding the testimony given Mr. [REDACTED]. The petitioner states:

Mr.

The USCIS used a wrong date to calculate the date that my marriage ended. Although I was initially kicked out of the house in January 2005, there were several efforts to make the marriage work. I was also assaulted by my wife on May 28, 2005. I was kicked out of the house at the end of May to June 2005. Thus, the declarations submitted by [REDACTED] and [REDACTED] were correct because they witnessed the May 28, 2005 assault and illegal evictions.

As discussed above, we have withdrawn the director's findings regarding the testimony of Mr. [REDACTED] and Mr. [REDACTED]. However, upon review we have found that the petitioner's general statement is not sufficient to establish that he was physically abused or that he was subjected to extreme cruelty. While the petitioner asserts on appeal that he was assaulted on May 28, 2005, he again fails to provide any description of this incident or of any other incident of purported battery. Although the petitioner has submitted statements from acquaintances which address the petitioner's claim of abuse, we have found that these statements also lack specificity. Further, the statements from the acquaintances, without any description of any incidents of abuse from the petitioner himself, do not carry sufficient weight to establish the petitioner's claims. Accordingly, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.