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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
EAC 04 141 52777

Office: VERMONT SERVICE CENTER

Date:

JAN 08 2006

IN RE:

Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

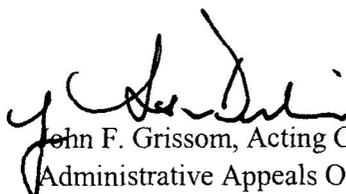
ON BEHALF OF PETITIONER:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. Counsel for the petitioner filed a motion to reopen. The AAO granted the motion to reopen to address a procedural matter and remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) 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 lawful permanent resident of the United States.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident 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)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B), 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].

In this matter, the director initially denied the petition on February 18, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his former wife during their marriage. The AAO concurred with the director's determination on November 14, 2005. Although the AAO found that the petitioner's subsequently filed motion did not meet the requirements of the regulation to reopen the matter, the AAO, on its own motion, reopened the matter to address the director's procedural error of failing to issue a Notice of Intent to Deny (NOID) the petition. In the August 3, 2006 decision, the AAO concurred with the director's determination but remanded the petition for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). The AAO incorporates its discussion of the pertinent facts and relevant evidence as set forth in its decisions of November 14, 2005 and August 3, 2006 here by reference.

Upon remand, the director issued a NOID on October 3, 2006, which informed the petitioner that he had failed to establish the requisite battery or extreme cruelty. In response to the NOID, the petitioner submitted: a psychoemotional and marital dynamics assessment prepared on October 25, 2006 by [REDACTED], licensed mental health counselor; the petitioner's November 24, 2006 personal statement; and two articles written on the subject of husband abuse. Upon review of the response, the

director found that the articles submitted were general in nature and did not specifically relate to the petitioner. The director noted that the petitioner in his personal statement indicated that his relationship with his former spouse was stable from 1996 up to 2002 when his children came to live with them; that his former wife became abusive and would constantly threaten him and call him names; and kicked him out of their home on July 2, 2004. The director reviewed the evaluation of [REDACTED] and noted some discrepancies and lack of supporting documentation in the statements made to [REDACTED]s by the petitioner. The director determined:

Although the behavior described by the self-petitioner would constitute battery and/or extreme cruelty, the information is based purely on his testimony three years after he purportedly separated from his wife and after issuance of the Service's NOID.

The director concluded that the petitioner had not met his burden of proof, denied the petition, and certified his decision to the AAO.

On certification, counsel for the petitioner asserts that the director admits that the behavior described constitutes battery and/or extreme cruelty and denies the petition because the information is based on testimony three years after the petitioner's separation from his wife and after the issuance of the NOID.

Counsel contends that the director's determination is based on "credibility" and that the director has disregarded the "any credible evidence" standard applicable to petitions for this benefit. Counsel references previously submitted evidence of: police reports, medical prescriptions, copies of temporary orders of protection, audiotapes of the couple's disputes, the petitioner's sworn statement, and doctor's notes and prescriptions. Counsel asserts that the credibility of the evidence has never been at issue and thus the petition should be overturned.

The AAO disagrees with counsel's analysis of the director's decision. Although the director could have better articulated his findings in the decision, the AAO observes that prior to stating that the behavior described by the self-petitioner would constitute battery and/or extreme cruelty, the director noted: that the petitioner reported to [REDACTED] that his former spouse had him arrested in 2003 and since then he had not contacted his former spouse; that although he indicated to [REDACTED] that assault charges against him had been dismissed, he had not provided the police incident report or court records related to his arrest; and that although the petitioner reported to [REDACTED] that his former spouse had stabbed him with a knife, the petitioner had not provided any documentation to support this allegation and had not mentioned this serious incident in his previous testimony. The AAO finds that the director properly challenged the incidents and information the petitioner reported to [REDACTED] and observes that the record when reviewed in total including the inconsistencies and deficiencies noted in prior decisions, does not demonstrate that the petitioner has been subjected to battery or extreme cruelty. The AAO further observes that the director and the AAO have acknowledged that the petitioner had a troubled relationship with his former spouse and that the petitioner has suffered from depression and related problems due, in part, to the troubled marriage. The AAO found, however, that not all forms of marital discord rise to the level of battery or extreme cruelty as set forth in the regulation. Moreover, despite requests for documentation to substantiate that the petitioner is the victim of any alleged abuse

that constitutes battery or extreme cruelty, the petitioner failed to provide such evidence. Upon review of the totality of the record, including the police reports, the temporary restraining orders, and an audiotape of an argument, the AAO is unable to determine who the perpetrator is and who the victim is within the petitioner's marriage. The AAO determines, in this matter, that the petitioner has not established that he has been subjected to battery or extreme cruelty perpetrated by his former spouse.

The AAO has also reviewed the October 25, 2006 evaluation prepared by [REDACTED] submitted in response to the NOID and although [REDACTED] based his findings upon a clinical evaluation of the petitioner, [REDACTED] finds that the petitioner's anxiety, emotional stress, and depression are "primarily triggered by the aforementioned traumatic marital history and abuse, and, secondarily, by his lingering immigration status and the perspective of losing contact with his children." [REDACTED] although assigning primary responsibility of the petitioner's anxiety, emotional stress, and depression to that of marital discord bases his finding on one interview with the petitioner that takes place on October 25, 2006, three years after the petitioner indicates he and his former spouse had been in contact. In addition, [REDACTED] relies on the petitioner's testimony regarding arrests, restraining orders, and the alleged abuse and not the independent documentary information available in court documents that have been requested but have not been forthcoming from the petitioner. Further, [REDACTED] reports that "the marital demise occurred as a direct consequence of [the petitioner's spouse's] rejection issues and recurrent aggression, and not because of [the petitioner's] maladaptive behavior." The AAO recognizes [REDACTED] training but questions the placement of blame based on the testimony and demeanor of one individual without an equally thorough assessment of the second individual.

Furthermore, the record includes physician's notes on the petitioner's mental health issues during the time period following the petitioner's separation from his former spouse (June 2004 to December 2004). The doctor's notes from the first visit in June 2004 indicate that the petitioner felt depressed due to his poor relationship with his wife and the notes on the petitioner's last visit on December 15, 2004 show that the petitioner felt better, slept well, had a good appetite and felt calm and less depressed. This 2004 report and the subsequent evaluations of the petitioner's mental health prepared by [REDACTED] [REDACTED] (dated March 9, 2005) and [REDACTED] (dated October 25, 2006) differ in that the subsequent reports attribute the petitioner's depression and emotional stress not only to the petitioner's marital conflict but also to the petitioner's immigration problems. The AAO does not find sufficient evidence to establish that the petitioner's depression or other mental health issues are the direct result of the petitioner's subjection to battery or extreme cruelty perpetrated by the petitioner's former spouse during their marriage, rather than the lingering uncertainty regarding his immigration status. The AAO does not find that the evidence in the record, including [REDACTED] evaluation, establishes that the petitioner suffered battery or extreme cruelty due to the behavior of his former spouse during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

The petition will be denied for the above stated reason. 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. The petitioner has not sustained that burden.

**ORDER:** The director's February 7, 2007 decision is affirmed. The petition is denied.