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U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date:

MAR 23 2009

EAC 04 175 51244

IN RE:

PETITION: Petition for Special Immigrant Abused 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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner seeks immigrant classification under 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 citizen of the United States.

The petitioner filed the instant Form I-360 on May 20, 2004. The director denied the petition on August 24, 2005, on the basis of his determination that the petitioner had failed to establish that he was subjected to battery and/or extreme cruelty by his wife, a United States citizen. The AAO agreed with the director's analysis in its May 25, 2006 decision, but remanded the petition to the director, on technical grounds, for issuance of a notice of intent to deny (NOID) in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).¹

The director issued the requisite NOID on December 6, 2006. The petitioner submitted a response on February 2, 2007, and submitted additional evidence. After considering the evidence of record, the director denied the petition on June 26, 2007 and certified his decision to the AAO for review. The contents of those documents are part of the record and their contents need not be repeated here. To date, no further submission has been received. Accordingly, the record is considered to be complete as it now stands.

The sole issue on certification is whether the petitioner has established that he was subjected to battery and/or extreme cruelty by K-T-,² his United States citizen wife. As the AAO found the evidence of record insufficient to establish that K-T- subjected the petitioner to battery and/or extreme cruelty in its May 25, 2006 decision, on certification the AAO will only consider the evidence submitted by the petitioner after its issuance of that decision. The following evidence in support of the petitioner's assertion that he was subjected to battery and/or extreme cruelty by K-T- has been submitted into the record since the AAO's May 25, 2006 decision:

- A letter from [REDACTED], dated January 4, 2007;
- A letter from [REDACTED], dated June 18, 2006;
- A letter from [REDACTED] dated December 17, 2006; and
- A letter from the petitioner, dated January 18, 2007.

¹ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOID's. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

² Name withheld to protect individual's identity.

Upon review, the AAO agrees with the director's determination that the petitioner has failed to establish that he was subjected to battery and/or extreme cruelty by K-T-. In its May 25, 2006 decision, the AAO agreed with the analysis of the director's earlier August 24, 2005 decision. In particular, the AAO found that the petitioner's description of events failed to establish battery and/or extreme cruelty. The contents of the AAO's decision, as well as the evidence of record upon which the AAO based its decision, are part of the record and their contents need not be repeated.

As noted previously, the director issued the NOID, as directed by the AAO, on December 6, 2006. In response, counsel submitted the four letters referenced above.

In his January 4, 2007 letter, ██████████ attests to the petitioner's good moral character, and states that, although he "rarely met" K-T-, he heard a great deal about her through friends. He states that, through his friends, he knows that the petitioner has suffered a great deal.

In his June 18, 2006 letter, ██████████ states that he and the petitioner used to see each other almost every day, as they lived near each other. Mr. ██████████ states that he used to visit the petitioner at his home, but stopped doing so as a result of K-T-'s "cold reception." Mr. ██████████ states that although the petitioner rarely talked about K-T-, and simply told ██████████ that he was suffering from emotional distress, he could tell what was going on. Mr. ██████████ describes two occasions during which he witnessed K-T- treating the petitioner poorly. Mr. ██████████ states that, on one occasion, he heard K-T- loudly ask the petitioner when he was going back to Vietnam. Mr. ██████████ states that, on another occasion, he saw K-T- verbally abuse the petitioner at a restaurant because the petitioner was unable to speak fluent English to the waiter. According to ██████████, K-T- used "bad words."

In his December 17, 2006 letter, ██████████ states that the petitioner suffered mistreatment at the hands of K-T-. Mr. ██████████ states that, although the petitioner told him that USCIS requires evidence of violence or psychological abuse, he does not think that a man like the petitioner will be able to provide such evidence, as the petitioner is an "Asian spirit man." According to ██████████, Asian spirit men do not ask for help from the outside world, and they are always well-suffered men who are not talkative.

In his January 18, 2007 letter, the petitioner states that, in Asia, if a husband cannot support his family it means he is an incompetent man, and if he is mistreated he is not to tell anyone. The petitioner states that many of his friends witnessed K-T-'s controlling behavior while at restaurants. He states that she also called him bad names at restaurants. The petitioner also states that K-T- kicked him out of the house on two occasions.

In his January 31, 2007 letter, counsel states that, since K-T- did not subject the petitioner to physical abuse, there are no police reports or medical records available. Counsel also states that, due to his cultural background and lack of finances, the petitioner did not seek psychological counseling or treatment.

The letters submitted by counsel fail to establish that the petitioner was subjected to battery and/or extreme cruelty by K-T-. [REDACTED] concedes that he “rarely met” K-T-, and his opinion that the petitioner was subjected to battery and/or extreme cruelty is based on what he has heard from friends. As he did not witness any of the alleged battery and/or extreme cruelty, his ability to opine on such matters is limited. The actions of K-T- as described by [REDACTED], and the petitioner, though perhaps cruel and unkind, do not rise to the level of the 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. The claims made by the petitioner and the letters submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that K-T-’s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. He has failed to overcome the director’s concerns regarding the issue of battery and/or extreme cruelty. The petitioner has failed to establish that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and his petition must be denied. The director’s decision will be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director’s June 26, 2007 decision is affirmed. The petition is denied.