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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office, MS 2090  
Washington, DC 20529-2090

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U.S. Citizenship  
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Services

B7

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: **MAY 15 2008**

EAC 07 161 51094

IN RE:

Petitioner: [Redacted]

PETITION: Petition for 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:

[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.

John F. Grissom  
Acting 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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

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 United States citizen.

The director denied the petition on September 18, 2008, determining that the petitioner had not established that he had been battered or subjected to extreme cruelty by his spouse.

On appeal, counsel for the petitioner submits a brief and documents previously submitted.

We concur with the director's determination that the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his spouse, I-F-<sup>1</sup>. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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 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)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(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 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].

The eligibility requirements are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which 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,

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

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 . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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 record in this matter provides the following pertinent facts and procedural history. The petitioner was born in Georgia of the Russian Federation who stated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that he entered the United States in July 1997. On August 16, 2000, the petitioner married I-F-, a naturalized United States citizen, in the State of New York. The petitioner filed the instant Form I-360 on May 11, 2007.

*Battery or Extreme Cruelty*

In the petitioner's May 2, 2007 initial statement submitted in support of the petition, the petitioner provided the following information as it relates to the alleged abuse perpetrated by I-F-: that after

September 11, 2001 I-F- changed, she screamed at him for no reason, was jealous, threatened to kill him, and insulted and humiliated him; that he urged his wife to seek psychiatric care; that their relationship deteriorated; that he stopped going out in public with her because she was rude and aggressive to other people and humiliated him in front of other people; she screamed that she did not want his son to come over from Russia; and she brought a man into their apartment who the petitioner later learned was her boyfriend. The petitioner also indicated that I-F- moved out of the apartment with her boyfriend for about two months and then returned. The petitioner stated that I-F- overused credit cards and when he tried to tell her to stop spending, she told him he had no right to intrude into her personal affairs, insulted him, called him nasty words, and threatened to leave him. The petitioner noted that he reported this incident to the police the next day on February 16, 2007, hoping that filing the report would calm his wife; but that by the end of February his wife told him she was tired of him, called him bad names, and left.

The record includes a police report dated February 16, 2007, indicating that the petitioner reported that he had a verbal argument with his wife over credit cards and bills on February 15, 2007 and that the couple did not currently live together and were formerly married.

The petitioner provided an undated psychological evaluation prepared by [REDACTED] licensed psychologist. [REDACTED] reported that he had examined the petitioner between February 10 and March 10, 2007 and noted: “[the petitioner] appears preoccupied by his current situation, namely abandonment by his wife and her abusive hostile behavior on several occasions.” [REDACTED] noted that he had been provided information that showed I-F- suffered from bipolar disorder and had been under psychiatric care. [REDACTED] indicated that the petitioner “could be diagnosed with the DSM-IV TR diagnosis of depressive disorder, NOS; acute stress disorder” and indicated further that the petitioner “perceives himself as a victim of an insidious abuse.” In a March 14, 2007 cover letter for the evaluation, [REDACTED] noted that the petitioner had also been seen by a psychiatrist who worked in the same office.

The petitioner also provided a statement signed by [REDACTED] who noted that the petitioner had indicated that I-F-’s behavior had changed. The petitioner further provided an April 2, 2007 statement signed by [REDACTED] who declared: that after two years of living together, the petitioner told her that the relations with I-F- and the petitioner had changed; that the petitioner told her something was going on with I-F-, that she was always unhappy and had become a completely different woman; and that once at the declarant’s birthday party, I-F- started fighting with the petitioner.

The record also included a March 1, 2007 note signed by [REDACTED] who indicated that the petitioner has diabetes and “suggest[s] that emotional stressful condition / including Family situation can provoke all [illegible] diseases and make them worse.”

The petitioner submitted a second statement, dated July 21, 2008, in response to the director’s request for further evidence. The petitioner stated: that his wife abused him verbally; that the words she used were humiliating; that she screamed at him; that she called him words in front of friends and in public;

and that a few times she threatened to kill him. The petitioner also indicated that his wife cheated on him. The petitioner stated that because of his wife's abuse and extreme cruelty he developed diabetes and high blood pressure.

On appeal, counsel for the petitioner asserts that the director did not consider that the petitioner developed diabetes as a direct result of the inhuman and cruel treatment the petitioner suffered and that the petitioner had told [REDACTED] that he did not have any medical or psychiatric problems before he perceived himself to be the victim of abuse.

Upon review of the totality of the record, the AAO concurs with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The AAO has considered the petitioner's perception that he suffered abuse and notes the petitioner's emotional suffering from his spouse's affair; however, the spouse's betrayal and the verbal abuse as described 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 AAO does not doubt that the petitioner is suffering from emotional problems; however, there is nothing in the record that demonstrates that his spouse's behavior constituted extreme cruelty. The AAO observes that the petitioner speaks generally of verbal abuse directed at him by his wife who suffered from bipolar disorder. The petitioner does not provide any detailed information evidencing his fear of his wife's behavior. The petitioner does not provide chronological information regarding specific incidents of abusive behavior by his wife. As generally described, I-F-'s actions, while maybe unkind and inconsiderate, do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The statements made by individuals on the petitioner's behalf also lack definitive information regarding abusive behavior perpetrated by I-F-. General statements that I-F-'s behavior changed and that the couple had a fight are insufficient to substantiate that the petitioner was subjected to extreme cruelty by his wife. The AAO has also reviewed the police report taken on February 16, 2007 regarding a fight over credit cards and bills between the couple the previous day. The report does not provide any evidence that the fight escalated to acts that constitute extremely cruel behavior.

The AAO has also considered [REDACTED]'s report and observes that [REDACTED] indicated that the petitioner "could be diagnosed with the DSM-IV TR diagnosis of depressive disorder, NOS; acute stress disorder" and indicated further that the petitioner "perceives himself as a victim of an insidious abuse." It is not apparent from [REDACTED] report that he has diagnosed the petitioner with depressive disorder but has indicated only that this is a possibility. In addition, [REDACTED] does not describe the abuse allegedly perpetrated by I-F- in detail and does not relate specifically described abuse that constitutes extreme cruelty to the petitioner's possible mental condition. The AAO finds that the report does not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's possible depressive disorder. [REDACTED] provides no chronological, clinical, or substantive details of the abuser's alleged abuse and its direct effects on the petitioner. The AAO acknowledges the petitioner's emotional turmoil at the break up of his marriage and his

consultation with a mental health professional for this turmoil; but the marital discord between the petitioner and his wife, as described, does not constitute battery or extreme cruelty.

The AAO further notes March 1, 2007 suggestion that an emotional stressful condition including a family situation can exacerbate diseases. The AAO finds that does not state that the petitioner's diabetes was caused by stress and that suggestion does not diagnose the petitioner's diabetes as provoked by any specific act perpetrated by the petitioner's spouse.

The claims made by the petitioner, the report of and the note of [REDACTED], and the general statements submitted on the petitioner's behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that I-F-'s non-physical behavior was accompanied by any coercive actions or substantiated threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. The record is insufficient in this regard. The record does not demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

Beyond the decision of the director, the AAO observes that the record includes inconsistencies regarding the petitioner's relationship with I-F- on February 15, 2007, as the police report filed by the petitioner indicates that the couple were no longer married at the time and that the couple did not reside together. The director should explore the additional issues of qualifying relationship and residence upon remand.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) that was in effect with the petition was filed. On remand, the director should address all the grounds for the intended denial of the petition as cited in the foregoing discussion.

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 decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.