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

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HC



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **SEP 08 2008**
EAC 05 112 52967

IN RE: Petitioner: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director (Director), Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The January 4, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii) 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, 8 U.S.C. § 1154(a)(1)(J), further states:

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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The director initially denied the petition on November 3, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage. On appeal, the AAO concurred with the determination of the director. In addition, the AAO noted that the petitioner failed to establish that he entered into his marriage in good faith. However, the AAO remanded the case on June 20, 2006 because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) in compliance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹

Upon remand, the director issued a NOID on July 26, 2006, which notified the petitioner of the deficiencies in the record and afforded him the opportunity to establish his claim of abuse and good faith marriage. The petitioner responded to the NOID on August 30, 2006. In a decision dated January 4, 2007, although the director found that the petitioner had adequately established his good faith entry into marriage, she determined that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse. The director's discussion will not be repeated here. The director certified her decision to the AAO for review and notified the petitioner, through counsel, that he could submit a brief to the AAO within 30

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

days of service of the director's decision. In response, counsel for the petitioner submitted a brief, dated January 26, 2007, and copies of documents already contained in the record.²

The relevant evidence submitted below was fully addressed in our prior decision, which is incorporated here by reference. Accordingly, we will only address the material submitted since that decision was issued which consists of the evidence submitted in response to the NOID and counsel's brief.

In the statement submitted by the petitioner in response to the director's NOID, the petitioner generally claims that he was "mistreated and abused," and that he was subjected to the "abusive and unruly conduct" of his spouse. He further states that his spouse subjected him to "insults [and] physical assault" and claims that she was "constantly aggressive." The petitioner does not describe his spouse's behavior, provide any description of her claimed actions, or provide details regarding the claimed insults, abuse, aggression or physical assaults other than to claim that he was locked out of his home "many times." In his brief on certification, counsel refers to evidence previously considered by the director and the AAO and found to be lacking and insufficient to establish the petitioner's claims. Counsel does not offer any additional facts or arguments related to the petitioner's claim of battery or extreme cruelty to be considered on certification.

Upon review, we find that the petitioner has failed to provide detailed and probative information regarding specific acts perpetrated against him by his spouse to establish that he was battered or subjected to extreme cruelty by his spouse during his marriage. The petitioner's vague reference to his spouse's aggression and the general claims that he was subjected to insults and physically assaulted do not demonstrate that his spouse's actions rose 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 or that her other, nonviolent actions were part of an overall pattern of violence.

Accordingly, the petitioner failed to demonstrate that he was battered or subjected to extreme cruelty by his spouse 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. Accordingly, the January 4, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The January 4, 2007 decision of the director is affirmed.

² Although the record also contains a letter from counsel dated February 1, 2007, the letter does not pertain to the instant Form I-360 petition, but rather to the petitioner's Form I-130 and Form I-485.