

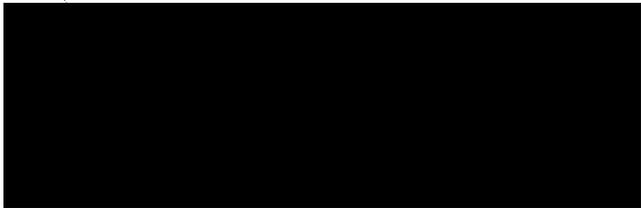
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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 09 2006

EAC 04 231 52500

IN RE:

Petitioner:



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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Lebanon who is seeking 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 the battered spouse of a United States citizen.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the information contained in the record, the petitioner wed United States citizen [REDACTED] on November 9, 2001 in Saginaw, Michigan. On December 13, 2001, the petitioner's spouse filed a Form I-130 in the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. On August 5, 2004, the petitioner's spouse submitted a written withdrawal of the petition and the Form I-130 petition and the Form I-485 were subsequently denied.¹

On August 6, 2004, the petitioner filed the instant Form I-360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse during their marriage. The petition was denied on January 7, 2005 based upon the director's finding that the petitioner failed to establish he has been battered by or subjected to extreme cruelty by his citizen spouse.

The petitioner, through counsel, submits a timely appeal with a brief. Counsel requests oral argument because "the law regarding how [the petitioner] was the subject of extreme mental cruelty by his U.S. citizen spouse's infidelity is not clear." It is noted that Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, counsel has not identified why her argument cannot be adequately addressed in writing. Moreover, we find that the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

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 abused 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.

¹ We note that in the "Acknowledgment of Withdrawal" issued by the District Director, Detroit, Michigan, the director made a finding that the petitioner entered into his marriage with [REDACTED] for the purpose of evading the immigration laws. Our discussion on appeal is limited only to a determination as to whether the petitioner has established that he was battered by or subjected to extreme cruelty by [REDACTED]. Accordingly, we will not make any separate or independent finding regarding whether the petitioner is subject to section 204(c) of the Act which prohibits the approval of a visa petition if the alien has previously been accorded, or has sought to be accorded, an immediate relative status as the spouse of a citizen of the United States, by reason of a marriage determined by the Secretary of Homeland Security to have been entered into for the purpose of evading the immigration laws. This issue may be relevant, however, if the petitioner should file a motion to reopen or reconsider this decision or any subsequent petition for immigration benefits.

Further, the regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

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 . . . 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

At the time of filing, the petitioner submitted no supporting documentation to establish that he was battered by or subjected to extreme cruelty by his citizen spouse. In a letter dated August 5, 2004, counsel for the petitioner stated:

[The petitioner] had no other choice but to file his I-360 without supporting documentation other than evidence of his eligibility. [The petitioner's] main goal is to have his I-360 on file. [The petitioner] has every intention of filing a solid and non-frivolous case.

Accordingly, on September 23, 2004, the director requested further evidence from the petitioner to establish that he was battered by or subjected to extreme cruelty by his citizen spouse. The petitioner responded to the request for evidence on October 12, 2004. As it relates to the petitioner's claim of abuse, counsel stated:

[The petitioner's] affidavit will discuss how [redacted] sexually transmitted diseases caused [the petitioner] extreme emotional harm. This emotional distress subjected [the petitioner] to even greater harm because [redacted] contracted sexually transmitted diseases during their marriage as a result of several extramarital affairs. [The petitioner] is also being treated for depression [sic] and anxiety.

In addition, the petitioner submitted four articles on gonorrhea and chlamydia, evidence that the petitioner's spouse was tested for gonorrhea and chlamydia, and a copy of the petitioner's prescriptions for Xanax and Lexapro for depression and anxiety. Counsel then requested an additional 60 days in which to present additional evidence.

On November 23, 2004, the petitioner submitted a sworn statement, a sworn statement from the petitioner's spouse, and a psychiatric evaluation. The petitioner makes the following claims in his personal statement:

The problems started to happen after about 6 months of marriage.

The first thing was that I started finding that she wanted everything to be done for her. She didn't really want to do anything. She wants easy stuff. [redacted] always wanted someone else to do things for her. Even if [redacted] had to get a paper from her job, she was afraid to go and ask the manager. In some cases, I had to talk to her manager. She fears people. [redacted] doesn't want to deal with people that she doesn't really know. She just wants to say in the circle of people who she knows and feels comfortable.

[redacted] started to put me down. The main argument was about her being irresponsible. She never paid her bills and quit school without me knowing. She actually failed and would lie

and say that she was going to school. After that, I thought that it's okay to fail but I couldn't understand why she didn't tell me. I found out only because we received a letter at home.

* * *

The arguments that we had caused her to drink . . . She'd come home drunk.

* * *

[REDACTED] could say very bad things when she was drunk. She would swear. In my culture, when you swear at your husband, it's very bad .

* * *

[REDACTED] would throw ashtrays. She'd throw plates. She'd try to hit me with all sorts of flying objects. I never called the police because it is so hard for I am a Lebanese man.

* * *

[REDACTED] could slap me. She used to hit me. I felt humiliated when [REDACTED] did things like that.

* * *

The worst things that [REDACTED] told me that she had cheated on me. I was so hurt . . . she told me that she met some guy over the internet. At that time, [REDACTED] had been with him for about 2 months

At first I didn't know why [REDACTED] felt guilty about that lie that she cheated on me. But I was suspicious about STDs because lots of people catch them in America. I was so worried that she could have caught a disease. I asked her if she caught a disease because she could have passed it on to me since she had a 2-month affair with that internet guy.

* * *

My wife also cheated on me with one of her girlfriends.

* * *

[REDACTED] only told me about the affair with the man because she didn't want me to find out about the venereal disease from a doctor. At the time, [REDACTED] didn't really have the money. She had to use my insurance. So, she had to let me know because I was going to find out anyway.

That's the only reason. If she had to get treated for gonorrhea and chlamydia, she couldn't keep it a secret.

* * *

I had to see a doctor in September because of a prostate problem that I had. I was so terrified. If [REDACTED] had not have been such a liar and so abusive, then, I wouldn't have had to go through this type of problem.

*

*

*

I am too scared to get tested even though I should. I don't want to find out the truth. I'm trying to convince myself that I'm okay. But the truth is that I had to see a urologist for prostate problems and I know about the links between some venereal diseases and . . . prostate cancer.

The statement submitted by the petitioner's spouse confirms the petitioner's claim that his wife would drink excessively and that she engaged in an affair with another man. Her statement, however, does not include any confirmation of the petitioner's claims that she was physically abusive, that she engaged in a lesbian affair or that she was infected with a sexually transmitted disease in the course of the affair with the man she met on the internet.

The psychiatric evaluation contained in the record, which is based upon the petitioner's statements to the individual conducting the assessment, indicates:

There was a lot of marital problems since the beginning partially due to cultural differences. He thinks his ex-wife is an alcoholic, who puts him down all the time. He had to spend a lot of money to satisfy her.

It is significant to note that the assessment does not contain any reference to physical abuse, affairs, or the petitioner's feelings and fears related to his claim of being exposed to sexually transmitted diseases. Additionally, the evaluation begins with page two and ends with page three. The record does not contain page one of the evaluation. Moreover, the evaluation does not contain any indication as to the individual who conducted the evaluation or their credentials or provide a date in which the evaluation was conducted.

The director reviewed the evidence contained in the record, including the evidence submitted in response to the director's request for evidence, and denied the petition based upon a finding that the evidence was not sufficient to establish that the petitioner had been battered or subjected to extreme cruelty by his citizen spouse. In his decision, the director noted that the petitioner's statements regarding physical abuse were not corroborated by any other evidence in the record including the psychological assessment. The director also noted that "marital discord, infidelities, and the stress from a marital relationships does not in and of itself establish an abusive relationship." As it relates to the evidence regarding the petitioner's spouse's alleged sexually transmitted diseases, the director stated that there was no evidence to substantiate that the petitioner's spouse "did in fact contract a sexually transmitted disease," and that there was no evidence to establish that the petitioner contracted a sexually transmitted disease from his spouse.

On appeal, counsel states that the petitioner "submitted sufficient evidence to demonstrate the affects [sic] of his spouse's venereal disease. [The petitioner] even produced her medical billing statements which proved she sought medical treatment for her medical conditions" and that she was "treated for chlamydia and trachoma." Counsel also asserts that in her affidavit the petitioner's spouse "acknowledged her extramarital affair and the resulting guilt arising from exposure to incurable diseases" and argues that the petitioner should not have to

provide evidence of his spouse's medical history or be subjected to "invasive medical examinations and disclose his health status in order for him to prevail on the facts."

We are not persuaded by counsel's arguments. First, contrary to counsel's statements on appeal, the record does not contain any evidence that the petitioner's spouse contracted a sexually transmitted disease or was treated for a sexually transmitted disease. The fact that the petitioner's spouse *was tested* for sexually transmitted diseases does not mean that she *actually contracted* a sexually transmitted disease or *was treated* for a sexually transmitted disease. The record does not contain the results of the petitioner's spouse's tests or any other evidence to show that she was actually treated for a sexually transmitted disease.² The record also contains no evidence that the petitioner was ever tested or treated for a sexually transmitted disease himself. Given that there is no evidence that the petitioner's spouse contracted a sexually transmitted disease, counsel's statement that the petitioner was exposed to "incurable diseases" cannot be supported. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Moreover, contrary to counsel's characterization of the petitioner's spouse's affidavit, there is no mention of sexually transmitted diseases, much less that the petitioner's spouse felt guilt because of "exposure to incurable diseases." In fact, as indicated previously in our decision, as it relates to her extramarital affair, the petitioner stated:

I started to have a romantic affair in the summer of 2003. I did this for 2 months because I felt very bored and very down on myself. I felt guilty and confessed to [the petitioner]. Our marriage has not been the same after that.

Finally, counsel argues that "*exposure to a venereal disease establishes a basis for the tort of intentional infliction of emotional distress*" and cites to an unpublished decision, "*In Gonzalez v. Moffit, 1999 U.S. App. Lexis 6400.*"³ Again, we are not persuaded by counsel's argument. The case cited by counsel involves a wife's claim against her former husband for negligence and intentional infliction of emotional distress based upon exposure to a sexually transmitted disease. However, unlike the facts of the instant case, where the petitioner has not established that he or his spouse contracted a sexually transmitted disease, it was without dispute that the wife contracted human papilloma virus (HPV) or genital warts through her former husband. Moreover, even if the facts of the instant case were analogous to those of the case cited by counsel, counsel has provided no argument to establish that a finding of reckless or intentional infliction of emotional distress, a tort action, is tantamount to establishing a claim of battery or extreme cruelty under 8 C.F.R. § 204.2(c)(1)(vi).

As the record contains no evidence that the petitioner's spouse contracted a sexually transmitted disease and, therefore, that the petitioner was exposed to a sexually transmitted disease, the petitioner is unable to show that he was battered or subjected to extreme cruelty based upon this claim. The fact that the petitioner's spouse had an extramarital affair is not sufficient to support a claim of battery or extreme cruelty.

² It should be noted that in counsel's response to the director's request for evidence, counsel describes these same invoices as being evidence that the petitioner's spouse was "*tested for 2 different sexual diseases*," not that she was actually "*treated*" as counsel attempts to argue on appeal.

³ The correct cite is 178 F.3d 1294. It can also be found at 1999 WL 220126 (C.A.6 (Ohio)).

As it relates to the petitioner's remaining claims that his spouse would throw objects, and hit and slap him, the record contains no evidence to corroborate the petitioner's statements. Most notably, the psychiatric evaluation provided on the petitioner's behalf makes no reference to the above stated claims or even to the petitioner's spouse's affair. Rather, the evaluation indicates that the problems between the petitioner and his spouse were "partially due to cultural differences," his spouse's alcoholism, the fact that she "puts him down," and required a lot of money to be satisfied. The petitioner's single statement combined with the lack of supporting information in the psychiatric evaluation does not carry sufficient evidentiary weight to establish that he was battered by or subjected to extreme cruelty by his spouse.

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 met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.