



U.S. Citizenship
and Immigration
Services

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B9

FILE: [Redacted]
EAC 06 018 50746

Office: VERMONT SERVICE CENTER

Date: MAR 14 2007

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:



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 "R. P. Wiemann".

Robert P. Wiemann, 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 appeal will be dismissed.

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 because the petitioner did not establish that his former wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and sections of the Pennsylvania Consolidated Statutes regarding domestic violence and assault.

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).

An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act also 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 explicated 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, 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 . . . , 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 explicated 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 case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Cambodia who entered the United States on April 28, 2002 as the nonimmigrant fiancé (K-1) of S-D-¹, a citizen of the United States. The petitioner married S-D- on July 9, 2002 in Pennsylvania. The petitioner filed this Form I-360 on October 17, 2005. On the Form I-360, the petitioner states his marital status as divorced, but the petitioner submits no documentation of the legal termination of his marriage. On December 23, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence. The director subsequently issued Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, battery or extreme cruelty. The petitioner, through counsel, timely responded with further evidence. The director denied the petition on August 2, 2006 for lack of the requisite battery or extreme cruelty and counsel timely appealed.

¹ Name withheld to protect individual's identity.

On appeal, counsel contends that the director erroneously characterized the petitioner's difficulties with his former wife as "marital discord" and did not address evidence that the petitioner's former wife subjected him to mental abuse that caused the petitioner to suffer severe depression and become suicidal. We concur with the director's determination. Counsel's claims and the evidence submitted on appeal fail to overcome the ground for denial. Beyond the director's decision, the record also fails to establish that the petitioner had a qualifying relationship with his wife and that he was eligible for immediate relative classification based on such a relationship.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's statements dated March 25, 2005; January 29 and May 26, 2006;
- The March 23, 2005 statement of [REDACTED] the sister-in-law of the petitioner's former wife;
- The March 24, 2005 statement of [REDACTED], with whom the petitioner has lived since separating from his former wife;
- The March 27, 2005 statement of the petitioner's friend, [REDACTED];
- The January 12, 2006 statement of [REDACTED] and [REDACTED], the petitioner's former neighbors in Cambodia;
- The January 10, 2006 statement of [REDACTED], the petitioner's uncle; and
- The June 26, 2005 psychological evaluation of the petitioner by the social worker and psychologist, [REDACTED]

In his statements, the petitioner explains that his former wife's behavior towards him changed after they had been married for one year and she began seeing another man. The petitioner reports that his wife called him degrading names, humiliated him in front of her parents and said that he did not have the ability to support her or do anything to make her life better. The petitioner states that his wife and her family forced him to do all the housework and did not let him go to school or work because he did not have money for tuition and it would cause trouble for them if he went to work. The petitioner reports that his wife and in-laws threatened him that if he did not listen to them, they would not let him stay with them and would not sponsor him for his "green card." The petitioner states that his wife also threatened to divorce him and get him sent back to Cambodia. The petitioner reports that his wife and her family controlled every aspect of his life and that his wife made him ask for permission to use the telephone, listened to his phone calls and read his mail. The petitioner further states that his wife demanded to know where he was at all times and that he sometimes felt like his former wife was going to hit him.

In January 2003, the petitioner reports that he had an argument with his former wife's parents during which his former wife screamed at him and told him to shut up.² The petitioner states that his wife then

² In his March 25, 2005 and January 29, 2006 statements, the petitioner reports this incident as

told him that she did not love him any more, had another man and was going to divorce him; and that she and her parents forced him to leave their house.

The petitioner states that his former wife's sister-in-law, [REDACTED] gave him some money and asked a friend to drive him to a section of the city where he could find a room to rent. The petitioner states that he then met [REDACTED] who let him stay in her home. After a couple of months, the petitioner contacted his former wife and found out that they had received a notice for their immigration interview. He states that his former wife told him she would not go to the interview because she had an examination that day. The petitioner states that he did not speak to his wife again until December 2004 when she called and asked him to sign divorce papers because she wanted to marry her boyfriend. When the petitioner refused, he states that she threatened to report him to the police and to immigration authorities to have him sent back to Cambodia.

A few days later, the petitioner states that his former wife and her brother came to [REDACTED]'s home and frightened the petitioner, [REDACTED] and [REDACTED] by banging loudly on the door. The petitioner reports that his former wife and her brother tried to convince him to sign the divorce papers, threatened to call immigration authorities if he did not sign, and that when the petitioner refused, his former wife's brother almost punched him. The petitioner states that his former wife and her brother threatened him again and then left.

The petitioner explains that he was too scared to call the police and "did not know enough about America to know whom to contact about what [his former wife] was doing to [him]." The petitioner reports that his wife's behavior made him fearful, anxious and sad and that he had difficulty sleeping and eating and became depressed.

The petitioner credibly describes the breakdown of his marriage and his former wife's use of his immigration status to threaten him into agreeing to a divorce. The petitioner's testimony does not, however, establish that his former wife subjected him to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In his January 29, 2006 statement, the petitioner states that he sometimes felt like his former wife was going to hit him, but he fails to explain in detail the basis for his fear and does not indicate that his wife ever threatened him with physical violence in either of his other two affidavits. The petitioner also does not demonstrate that the hurtful and threatening behavior of his former wife was part of a pattern of violence or psychological abuse, rather than the result of her infidelity and the resultant breakdown of their marriage.

The statements of the petitioner's friends, former neighbors and relatives confirm the marital conflict that occurred between the petitioner and his former wife, but fail to establish the requisite battery or extreme cruelty. [REDACTED] confirms that the petitioner's former wife insulted him and told him to stay at home and do all the housework. [REDACTED] also states that she was present during the January 2003

occurring in January 2003. In his May 26, 2006 statement, he reports the date as January 2004, apparently in error.

incident and that she felt sorry for the petitioner, gave him some money and asked a friend to give him a ride to the area of Philadelphia where many Cambodians lived. [REDACTED] does not provide probative information regarding any specific incidents of battery or extreme cruelty. [REDACTED] and [REDACTED] confirm the petitioner's account of the December 2004 incident where the petitioner's former wife and her brother came to [REDACTED]'s home and threatened the petitioner in an attempt to get him to agree to a divorce. [REDACTED] and [REDACTED] also attest to the petitioner's depression, but they do not provide probative evidence of battery or extreme cruelty. [REDACTED] and [REDACTED] state that they heard of the petitioner's marital problems through his family in Cambodia, but they provide no further, relevant information. Finally, [REDACTED] simply states that his wife once called the petitioner from Cambodia, but "he was so afraid to talk on the phone or said something. Just said little bit then hung up. Look like his wife keep an eyes on him [sic]."

The psychological evaluation of [REDACTED] confirms that the petitioner suffered from depression related to the breakdown of his marriage, but the evaluation does not establish that the petitioner's former wife subjected him to battery or extreme cruelty during their marriage. [REDACTED] states that he met with the petitioner on three occasions of unspecified length during May and June of 2005, over two years after the petitioner states that he and his former wife separated. [REDACTED] diagnoses the petitioner with "Major Depression, Single Episode, Moderate" on Axis I of the Diagnostic Statistical Manual, Fourth Edition (DSM-IV) and with "Acculturation difficulties; financial problems; language barrier; uncertain immigration status" on Axis IV of the DSM-IV. [REDACTED] also states that the petitioner reported suicidal ideation. [REDACTED] concludes:

[The petitioner] appears to be experiencing a state of acute depression related to the recent breakup of his marriage and the complete dislocation of his life that followed. He feels like there is no longer a place for him in Cambodia and he remains disconnected from American life and culture. As a function of his sense of hopelessness, he ruminates about his situation and thinks of suicide.

[REDACTED] does not indicate that the petitioner suffered from post-traumatic stress disorder or exhibited symptoms of other mental health conditions that are commonly associated with having survived domestic violence. [REDACTED] evaluation does not demonstrate that the petitioner's depression is related to the battery or extreme cruelty of his former wife, rather than her infidelity, the breakdown of their marriage and the petitioner's resultant, immigration-related difficulties.

On appeal, counsel claims that Pennsylvania law "supports a finding of abuse in this case" because it defines abuse as including, *inter alia*, the "infliction of false imprisonment pursuant to 18 Pa. C.S. § 2903." 32 Pa. Consol. Stat. Ann. § 6102(a) (West 2000). Title 18 of the Pennsylvania statutes defines the offense of false imprisonment as follows: "A person commits an offense if he knowingly restrains another unlawfully so as to interfere substantially with his liberty." 18 Pa. Consol. Stat. Ann. § 2903(a) (West 2000). The evidence does not indicate that the petitioner's former wife inflicted false imprisonment upon the petitioner, as the Pennsylvania statute defines that crime. The petitioner states that his wife and her parents did not allow him to go to school or to work outside of their home, but he

submits evidence that he was admitted to a community college for the Spring semester of 2003. The statements of the petitioner and the other witnesses also fail to describe exactly how his former wife or her family restrained the petitioner and the record is devoid of any evidence that any court or law enforcement agency found that the petitioner's former wife or her family had subjected the petitioner to false imprisonment under the Pennsylvania statute. Accordingly, the record does not support counsel's claim. In sum, the evidence fails to demonstrate that the petitioner's former 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.

Qualifying Relationship and Eligibility for Immediate Relative Status

Beyond the director's decision, the record also fails to establish that the petitioner had a qualifying relationship with his former wife. An alien who has divorced a U.S. citizen is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act if he or she demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). The petitioner fails to meet both of these requirements. First, as discussed in the preceding section, the petitioner has not established that his former wife subjected him to battery or extreme cruelty. Second, the petitioner states that he is divorced, but fails to demonstrate that he filed this petition within two years of the divorce. In Part 3 of the Form I-360, the petitioner checked "Divorced" as his marital status. However, the record is devoid of any documentation of the legal termination of the petitioner's marriage. While the petitioner discusses his wife's efforts to have him sign divorce papers, he does not discuss how his marriage was eventually terminated. Without evidence of the date of the petitioner's divorce, we cannot conclude that this petition was filed within two years of the legal termination of his marriage. Accordingly, the petitioner has not established that he had a qualifying relationship with his former wife pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on his relationship with his former wife, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to a U.S. citizen. Because the petitioner has not established that he had a qualifying relationship with his former wife, he has also not demonstrated that he was eligible for immediate relative classification based on such a relationship.

The record fails to establish that the petitioner's former 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. The petitioner also fails to demonstrate that he had a qualifying relationship with his former wife pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and that he was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 appeal will be dismissed.

ORDER: The appeal is dismissed.