



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 06 059 50355

Office: VERMONT SERVICE CENTER

Date: MAR 20 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:

SELF-REPRESENTED

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, 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 or his child to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a letter and copies of documents previously submitted.

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 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 Mauritania who entered the United States on October 26, 1999 as a nonimmigrant student (F-1). On February 12, 2002, the petitioner married A-D-<sup>1</sup>, a U.S. citizen, in Wisconsin. The petitioner filed this Form I-360 on December 16, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty. The petitioner timely responded with additional evidence. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, battery or extreme cruelty. The petitioner responded to the NOID with further evidence. The director denied the petition on August 21, 2006 for lack of the requisite battery or extreme cruelty and the petitioner timely appealed.

On appeal, the petitioner reiterates that his wife subjected him to physical abuse and extreme cruelty. We concur with the director's determination. The petitioner's statements on appeal fail to overcome the ground for denial.

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

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

- The petitioner's undated, seven-paragraph statement and June 11, 2006 letter submitted below and his October 16, 2006 letter submitted on appeal;
- Records of calls made to the Milwaukee, Wisconsin police on October 12 and 26, 2005;
- Two photographs of the left-side of the petitioner's face and neck.

In his statement and letters, the petitioner explains that about three years after they were married, his wife began using drugs and became abusive. The petitioner reports that on October 12, 2005, his wife came to his store at approximately 4:00 in the afternoon, demanding his keys, wanting more liquor and screaming at him. The petitioner states that his wife slapped him in the face, grabbed his keys and ran out, after which he called the police. On October 26, 2005, the petitioner reports that he and his wife were at home and that his wife accused him of having a girlfriend when she answered his cellular telephone and the person on the other line hung up. The petitioner reports that his wife pushed him, scratched his face, hit and screamed at him. The petitioner states that he was going to call the police, but did not do so because his wife cried, begged him not to and he felt sorry for her.

The petitioner explains that he had to sell his store because his wife would come in and cause trouble. He states that his wife would throw the digital video disc player and remote control at him and stole his money and credit cards. The petitioner also reports that his wife became pregnant by another man during their marriage and that she later became pregnant by him, but then had an abortion without telling him. The petitioner reports feeling as though he had no control over his life and feeling embarrassed by, and fearful of, his wife's behavior.

The police call records and the photographs fail to support the petitioner's claims. The police call records provide no narrative description of the underlying events. The call record for October 12, 2005 simply reports the type of call as "911 Abuse" and identifies the caller as "Sail Food," but does not specifically identify the petitioner or his wife. In addition, the record reports the time of the call as 8:30 in the evening and not near 4:00 in the afternoon, as stated by the petitioner. The call record for October 26, 2005 reports the type of call as "Family Trouble," identifies the petitioner and "Sail Food" as the caller and notes, "Clr having trbl w/his wife at abv loc nfi" (abbreviations in original). Yet the petitioner states that his wife attacked him at home, not his store, on October 26, 2005 and that he did not call the police on that occasion. The petitioner does not explain the discrepancies between his statements and the police record.

The photographs are of little probative value. One of the photographs is out of focus and contains no visible sign of injury. The other photograph shows two small faint lines on the petitioner's chin and neck. The petitioner has written the date of October 26, 2005 on these photographs, but the police call record from this date does not indicate that the petitioner reported or that the police observed any injuries.

The petitioner submitted no other evidence of battery or extreme cruelty of the types listed in the director's RFE, NOID and the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Although he is not required to

do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The petitioner's testimony fails to establish that his wife battered or subjected him or his child to extreme cruelty. The petitioner states that his wife stole his money and credit cards, but he does not submit evidence to corroborate his statements or provide any detailed testimony that would establish that his wife subjected him to economic abuse. The petitioner indicates that he suffered mental anguish as a result of his wife's abuse of alcohol and controlled substances, but his testimony does not establish that his wife's erratic behavior while under the influence of alcohol or controlled substances constituted battery or extreme cruelty. The documentary evidence also fails to corroborate the petitioner's statements concerning his wife's alleged physical abuse. The photographs do not clearly show any injury to the petitioner and the corresponding police call record does not report any physical injury of the petitioner. In addition, the police call records contradict three significant details in the petitioner's testimony, for which the petitioner provides no explanation.

The petitioner has not demonstrated that his wife subjected him or his child to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.