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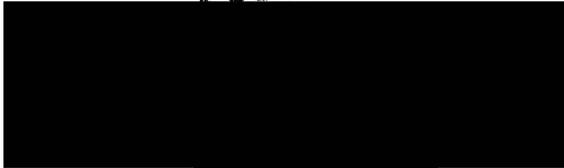
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

DEC 10 2008

EAC 05 201 53706

IN RE:

Petitioner:



PETITION: Petition for 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)

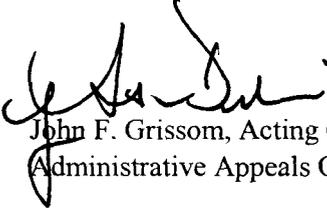
ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

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

The petitioner seeks immigrant classification 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 an alien battered or subjected to extreme cruelty by a United States citizen.

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 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].

In this matter, the director initially denied the petition on January 31, 2006, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his wife during their marriage. In its October 3, 2006 decision on appeal, the AAO concurred with the director's determinations but remanded the petition for issuance of a Notice of Intent to Deny (NOID) the petition in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on December 1, 2006 which informed the petitioner that he had failed to establish the requisite battery or extreme cruelty by his wife during their marriage. In response to the NOID, the petitioner submitted a statement dated January 24, 2007. In the January 24, 2007 statement, the petitioner made the following points:

- His wife changed from the woman he married (in May 2002) to a hostile drug abuser and when he talked of her drug abuse she would go berserk and yell obscene words at him;
- She refused to work and would demand money from him and would "cause havoc and all kind of threats" until he gave her money;
- His wife was "prostituting" and engaged in infidelity.

The petitioner noted that these actions of his wife were traumatizing and that he had headaches all the time. The petitioner also stated:

- His wife had trouble with the law when she stabbed a teenager during a drug scuffle;
- She smoked marijuana in the house
- His wife and her friends would eat all the food in the house;
- Her friends were scary men;
- She called him “primitive” and “stupid African” when he complained about her lifestyle and the drugs.

The petitioner indicated that he felt manipulated and her infidelity was “hell”. The petitioner claimed:

- One day when he came home and all his wife’s friends were in the house, he got angry as he needed to sleep before going to his next job. The petitioner indicates that his wife, cursing, threw a glass of beer in his face, charged him and pushed him back. He tripped over the stove and fell on his back, injuring his leg (that left a scar) and banged his head. The petitioner provides a picture of a scar on his leg.
- He had to sleep in the car after the incident.
- He was afraid to call the police because of his wife and her male friends.

The petitioner relates another incident where his wife chased him with a baseball bat but he was able to get to his car and his wife just hit the car. He states again that he did not call the police because he did not want his wife’s children to see their mother go off to jail. The petitioner also notes that his wife and her male friend impersonated him over the phone to transfer money from his personal account to their joint account whereupon she withdrew \$200. The petitioner indicates he complained to the bank but when asked if he wanted to start an investigation chose not to do so. The petitioner reports that his wife belittled him, threatened to do him greater harm, and said that she did not care if he was deported. The petitioner concludes by indicating that he did not feel safe when his wife was high or needed money for drugs and that the neighborhood they lived in was not safe. The petitioner explains that he cannot afford a therapist but that his doctor told him his symptoms of sadness and mood swings were a sign of depression and anxiety. The petitioner also includes a statement about his love for the United States.

The director denied the petition, finding that the petitioner’s January 24, 2007 statement differed from his February 24, 2006 statement as regards to the incident of his wife throwing beer in his face and shoving him. The director observes that the petitioner’s January 24, 2007 statement emphasizes an injury to his leg during this incident; but that his February 24, 2006 statement indicates that he hurt his hand terribly during this same incident. The director found that the reliability of the petitioner’s statements questionable and accordingly their weight as evidence diminished.

On certification, the petitioner provides a May 28, 2007 statement wherein he explains that the incident involving his wife throwing beer in his face, his tripping on the stove, and subsequent injury resulted in

injury to both his hand and to his leg. The petitioner indicates that because his hand was swollen and hurt for a week that injury was paramount in his mind when he made his February 2006 statement. The petitioner also indicates that he did not know he could use the scar on his leg as evidence until it had been explained to him over and over. The petitioner notes that he does not have an attorney and has basic English but has submitted everything that he has been asked to submit. The petitioner provides a photograph of a scar on his leg, a photograph of the stove that caused the leg injury, two photographs of bruises/scars on his forearm that he indicates are "hand scrapes scars that are also permanent." In an explanation of the nature of the photographs, the petitioner states: "[t]he most injury was the fear that I lived with everyday and the humiliation."

In the AAO's prior decision of October 3, 2006, incorporated here by reference, the AAO fully discussed the pertinent facts and relevant evidence submitted and found that the petitioner's initial general complaints about his wife's outbursts, name calling, drug abuse, demands for money, and brandishing of a baseball bat were not conduct of battery or extreme cruelty as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The AAO also discussed the incident of the petitioner's wife pushing him causing him to trip and to hurt his hand terribly, finding that the petitioner failed to state exactly when the incident occurred and although not required failed to submit corroborating evidence of the hand injury. The petitioner has not provided any further evidence, either in response to the NOID or to the director's decision that overcome these findings.

The AAO notes that the petitioner on certification has offered explanations regarding why he did not involve the police and why he did not see a therapist for his mental anguish. The petitioner indicates that he did not approach the police because he was afraid of his wife's male friends and he did not want to call the police because he did not want his wife's children to see their mother go off to jail. However, the petitioner does not indicate that he was directly threatened by his wife's male friends and does not indicate that any such threats would have been instigated by his wife. Not involving the police to protect his wife's children from seeing her go to jail suggests that although his wife's behavior was repugnant it was not so severe as to constitute extreme cruelty to the petitioner. The petitioner also notes that he did not have the money to see a therapist but does not explain why he did not involve the pastor of his church or other social service organizations.

The AAO also finds that the petitioner's explanation on certification regarding the differences in his statements of claimed injuries suffered from one particular incident is insufficient. The petitioner does not identify the time period of the incident involving his wife pushing him. The petitioner's photographs of the bruises/scars on his forearm do not appear to have developed from an injury to his hand. The submission of the two photographs of the claimed "hand injury" diminish the credibility of the petitioner's claim to the abuse. Moreover, although the petitioner claims to have been pushed or shoved by his wife, his claimed injuries resulted from tripping into the stove. The intent of the petitioner's wife to subject him to physical abuse is not clear. As described, the petitioner's wife's actions while unkind, inconsiderate, and possibly resulting from her drug abuse, are not acts of forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner fail to establish that the petitioner

was the victim of any act or threatened act of physical violence or extreme cruelty, or that any of his wife's non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that he has established the requisite abuse as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petition will be denied for the above stated reason. 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 May 7, 2007 decision is affirmed. The petition is denied.