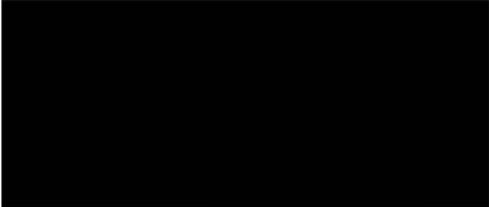




U.S. Citizenship
and Immigration
Services

B4



FILE: [Redacted]
EAC 05 135 53024

Office: VERMONT SERVICE CENTER

Date: JUL 02 2008

IN RE: Petitioner:



PETITION: Petition for Special 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.

Maura Deadrick
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 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.

The director denied the petition finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage.

The petitioner submits a timely appeal.

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, 8 U.S.C. § 1154(a)(1)(J) 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 standard and 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 St. Lucia who entered the United States as a nonimmigrant visitor (B-2) on August 20, 1994. On June 6, 2001, the petitioner married I-J,¹ a U.S. citizen, in Hempstead, New York. On July 31, 2001, I-J- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and on the same date, the petitioner filed a corresponding Form I-485, Application to Adjust Status. On April 2, 2005, the district director denied the Form I-130 petition and the corresponding Form I-485 application.

On April 8, 2005, the petitioner filed the instant Form I-360. On July 29, 2005, the director issued a Request for Evidence (RFE), which explained the insufficiency of the supporting documents initially submitted and asked the petitioner to submit further evidence to demonstrate that I-J- battered or subjected him to extreme cruelty. The petitioner timely responded to the RFE on September 26, 2005 and requested additional time to respond to the director's request. The director granted the petitioner's request for additional time on September 28, 2005. The petitioner responded with additional testimonial evidence on November 25, 2005. On May 10, 2006, the director issued a Notice of Intent to Deny (NOID) the petition based on the petitioner's failure to establish his claim of battery or extreme cruelty. The petitioner responded to the NOID on June 8, 2006 and submitted additional evidence. The

¹ Name withheld to protect individual's identity.

director denied the petition on November 9, 2006, noting inconsistencies in the evidence and finding that the petitioner failed to establish the requisite battery or extreme cruelty.

The petitioner submits a timely appeal and argues that the inconsistencies noted by the director were attributable to a "typographical error." In addition, the petitioner cites case law related to family law and divorces in support of his claim of abuse. As will be discussed, we concur with the director's decision that the petitioner has failed to establish that he was battered or subjected to extreme cruelty I-J- during their marriage.

With the initial filing, the petitioner submitted an affidavit, dated April 4, 2005. In his affidavit, the petitioner states that the problem with his spouse started when they received a letter from the Internal Revenue Service (IRS), regarding their 2001 income tax refund. The IRS informed the petitioner and his spouse that their 2001 income tax refund would be withheld and applied to an outstanding student loan obligation. The petitioner states that when he asked his wife about the student loan, she got "very upset" and replied "it is none of [your] business," and that whenever he tried to talk to her about the loan, they end up in "an argument."

The petitioner states that after their 2002 tax refund was withheld for payment of the student loan, he told his spouse that he would file his own tax return for 2003 separately. The petitioner claims that from then on "our relationship changed completely," that his spouse stopped speaking to him, and whenever he passed near her, she would start to curse at him for no reason. The petitioner claims that he felt "uncomfortable," became "very stressed out" and was affected "emotionally and mentally." The petitioner claims that he called his friends and relatives and told them about his problems. The petitioner further states that when his spouse found out that he filed a separate income tax return in 2003, she started to do "strange things" such as going out late at night, not coming home for days, and if he asked her whereabouts, they would end up with "big arguments." The petitioner claims that his telephone started to ring late at night, and whenever he answered the phone, the caller would hang up on him, and on August 4, 2004, his spouse left their apartment with all her belongings. The petitioner claims that he does not know her current whereabouts, and that he was "very stressed" out and got "very sick" after his spouse left.

In his second statement, dated November 21, 2005, submitted in response to the director's RFE, the petitioner claims that he was verbally abused by his spouse, was socially isolated from his friends and family as a result of his spouse's alleged abuse, and that his spouse was very possessive. Regarding the verbal abuse, the petitioner claims that his spouse called him derogatory names and used derogatory words on him, such as "big dog," "stupid," "big fool," "dumb," "crazy," and other expletives. Regarding the social isolation, the petitioner claims that prior to their marital problems, he and his spouse used to go out together, but when their problems started, his spouse started to "abuse" him around his friends and family, that his friends and family did not want to be in their company, and he was embarrassed to be among his friends and family because they always talk about his spouse's behavior and that his spouse always threatened to embarrass him. The petitioner also claims that after his marital problems started, he could no longer talk to his spouse, was depressed, had sleepless nights,

and that people started to look down on him.

The petitioner, however, does not describe any instance of threatened or actual physical abuse. Moreover, the petitioner provides no specific and probative details which establish a claim of extreme cruelty. The petitioner's general claims such as being called names and embarrassed in front of family and friends are not sufficient to establish a claim of abuse.

Although the petitioner also submits letters from doctors, counselors and friends, the evidence is not sufficient to demonstrate the alleged abuse. Moreover, as will be discussed, in some instances, the statements provided on the petitioner's behalf also contain claims not consistent with those of the petitioner.

The letter from [REDACTED], dated September 30, 2005, states that [REDACTED] conducted a psychiatric interview with the petitioner because of "his wife's abandonment of him and subsequent failure to assist him in his application for citizenship." [REDACTED] describes the petitioner's history with his spouse related to the filing of their tax returns and states that their "married life became stormy" and that the petitioner became "emotionally highly disturbed." In addition, Dr. [REDACTED] states that while there were "no physical battles," the petitioner's spouse would push the petitioner, throw objects at him, refused to have sexual relations with him, and finally abandoned him.

[REDACTED]'s letter, dated September 19, 2005, states that the petitioner had been under Dr. [REDACTED]'s care for the past two years for "severe depression related to some marital problems." Dr. [REDACTED] does not provide any description of the alleged abuse or provide any probative details of the claimed "marital problems." In his second letter, dated May 20, 2006, submitted in response to the director's NOID, [REDACTED] asserts for the first time that on unspecified occasions the petitioner's spouse "became violent at times, hit him [and] pushed him around." [REDACTED] does not explain why he failed to document these claims in his prior letter.

The letter from [REDACTED], Senior Case Manager at Safe Horizon, generally states that the petitioner was a "victim of domestic violence, perpetrated by his wife. . . ." [REDACTED] further states that Safe Horizon is providing counseling to address the petitioner's "victimization issues." However, [REDACTED] fails to provide any probative information regarding the petitioner's "victimization" or the alleged domestic violence perpetrated against him other than to state that his spouse abandoned their home. In her second letter, dated June 2, 2006, submitted in response to the director's NOID, [REDACTED] reiterates her previous assertion that the petitioner was abandoned by his spouse. However, in this second letter, [REDACTED] additionally asserts that the petitioner was "often verbally and physically abused." The letter generally describes unspecified instances where the petitioner's spouse called the petitioner names and threw things at him. [REDACTED] also states that the petitioner's friends stopped coming to his home because they were "uncomfortable" with the petitioner's spouse because she would embarrass the petitioner. [REDACTED] fails to provide any explanation for the new claims provided in response to the NOID.

The affidavits from the petitioner's friends also contain insufficient information to establish the petitioner's claim of abuse. [REDACTED] and [REDACTED] generally state that the petitioner and his spouse had arguments, that the petitioner's spouse would insult the petitioner and call him derogatory names. [REDACTED] claims that the petitioner told him about the "problem that he was going thr[ough] with his wife" and states that the petitioner did not have his friends over to his home because of fear that his spouse would embarrass him. [REDACTED] does not elaborate on the "problems" in the petitioner's marriage and although [REDACTED] indicates that he went to the petitioner's home "several times," he does not describe the petitioner's spouse's behavior or provide examples of how she would embarrass the petitioner. [REDACTED] and [REDACTED] also generally reference arguments, "quarrels" and the petitioner's "problems" with his spouse, but do not provide any further probative information. Finally, [REDACTED] claims that after noting that the petitioner and his spouse began missing church services, he spoke to the petitioner and was told that he had "some problem" with his wife for which he counseled the petitioner. Like the preceding statements submitted on the petitioner's behalf, [REDACTED] does not provide specific details regarding the petitioner's marital "problems."

In finding that the petitioner failed to establish his claim of battery or extreme cruelty, the director noted the discrepancies between the petitioner's statements and the letters submitted by [REDACTED] and [REDACTED] regarding the alleged physical abuse of the petitioner. In addition, the director noted that the petitioner made statements relating to his marriage that were internally inconsistent and inconsistent with other evidence in the file. Specifically, the director noted that the petitioner made statements relating to how long he resided with his spouse that contradicted statements by Dr. [REDACTED], Dr. [REDACTED], [REDACTED] and the petitioner's own statement in regard to his scheduled immigration interview. Although the director did not deny the instant petition based on residence, he noted that the discrepancies in the record called into question the petitioner's overall credibility.

On appeal, the petitioner claims that the director was mistaken in his decision and that the evidence submitted was sufficient to establish that he was battered or subjected to extreme cruelty by his spouse. The petitioner argues that the discrepancies in the record related to his claim of residence with his spouse were a "typographical error" which should not be confused with conflicting evidence. The petitioner repeats the claims made in his prior statements and submits copies of evidence previously submitted. The petitioner did not, however, submit any additional probative evidence to support his claim that he was battered or subjected to extreme cruelty by his spouse. In addition to reiterating his previous claims, the petitioner asserts for the first time on appeal that his spouse threatened him with his immigration status, repeatedly telling the petitioner that "she was going to withdraw her immigration petition or would stop participating in petitioning process." The petitioner also claims for the first time on appeal that his spouse "would often get agitated and sometimes push and throw various items at [him], including shoes, books and pillow... refused to have sex with [him] and forever threatened to leave." The petitioner does not provide an explanation for his failure to make these claims in either of his two previous statements. These inconsistencies detract from the credibility of the petitioner's claim that he was battered or subjected to extreme cruelty by his spouse. In his decision, the director specifically notified the petitioner of the

discrepancies in the record and provided the petitioner the opportunity to submit other evidence to resolve the inconsistencies. Rather than providing an explanation, on appeal, the petitioner offers new claims. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Regardless, even if the petitioner's statements and the evidence submitted on his behalf were consistent, the claims contained therein fail to describe any specific instance of abuse in probative detail. The petitioner failed to provide probative information to establish that he was battered by his spouse or that his spouse's non-physical actions rose to the level of extreme cruelty. Although the petitioner cites to several family law cases related to extreme cruelty, the petitioner has failed to establish that his spouse's behavior is tantamount to the behavior found by the courts to constitute extreme cruelty in a family law context.

Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his former spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner has failed to overcome this finding on appeal.

ORDER: The appeal is dismissed.