



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]
EAC 05 152 53688

Office: VERMONT SERVICE CENTER

Date: **MAY 19 2008**

IN RE:

Petitioner: [Redacted]

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:

[Redacted]

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 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 citizen of the United States.

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, through counsel, submits a timely appeal with additional evidence.

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 . . . spouse, 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 Bulgaria who entered the United States on June 13, 2003 as a J-1 nonimmigrant. On August 7, 2004, the petitioner married L-C-,¹ a United States citizen in Illinois. On November 1, 2004, L-C- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. L-C- withdrew the Form I-130 and the Form I-485 was subsequently denied on March 15, 2005.

The petitioner filed the instant Form I-360 on May 3, 2005. On August 22, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty. The petitioner, through counsel, timely submitted a request for additional time to respond to the RFE on October 21, 2005. The director granted the petitioner an additional period of 60 days in which to respond to the RFE. The petitioner did not respond to the RFE. On March 21, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, notifying the petitioner of the deficiencies in the record and affording him the opportunity to submit further evidence to establish, *inter alia*, his claim of battery or extreme cruelty. The petitioner responded to the NOID on May 4, 2006. The director denied the petition on July 27, 2006, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage.

The petitioner, through counsel, submits a timely appeal and argues that the director failed to "make a determination as to the credibility" of the petitioner and "to consider all the circumstances in their totality" In addition, the petitioner submitted a new personal statement, affidavits from two of his acquaintances, and an excerpt on Wicca printed from the Internet. As will be discussed, upon review, we concur with the director's finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse.

At the time of filing, the petitioner submitted an affidavit, dated February 2, 2005. In his affidavit he claimed that being married to his spouse "was very difficult at times" because she "was very demanding and caused

¹ Name withheld to protect individual's identity.

[him] a lot of stress.” Additionally, he stated that his spouse “did not understand [his] stress and demanded more from [him] than [he] could deliver, which caused a lack of communication.” The petitioner did not allege any threatened or actual act of battery and the vague assertions that his spouse was “demanding” and caused him stress are not sufficient to establish that he was subjected to extreme cruelty by his spouse.

In a separate five-page statement, the petitioner provided additional details regarding his claim of battery and extreme cruelty. In this statement, the petitioner described his wife’s participation as a Wiccan² and indicated that after approximately three months of marriage, his spouse began turning him down when he wanted to have sexual relations with her, that she only wanted to have sex once a week or less and did not seem to enjoy it as much as she used to. The petitioner further claimed that his spouse “started creating tension by issuing orders when she wanted something instead of the usual politeness she had.” The petitioner stated that his wife began blaming him for being wrong and indicated that she started demonstrating “anger and aggressiveness,” but refused an offer to see a therapist. The petitioner described one incident on January 30, 2005 when his spouse came home late, started yelling and went into the basement to hit a punching bag until her hands started bleeding. Although the petitioner indicated that he left the home and that he was “scared” to go back, he does not indicate that he felt threatened or that he was actually physically assaulted by his spouse on that occasion. In addition, the petitioner described finding a voodoo doll in his spouse’s “magic” room that he believed looked like him. Ultimately, the petitioner claimed that his spouse kicked him out of their house and refused to give him his possessions.

The petitioner also submitted an affidavit from his friend, ██████████ who stated that “[o]verall, it appeared as a very healthy, close and active relationship” between the petitioner and his spouse. ██████████ claimed that it “came as a great surprise to [him] when [the petitioner] told [him] in Jan. 05 that [his spouse] was ‘behaving odd’ lately.” ██████████’s brief statement does not describe any threat or actual act of battery committed against the petitioner by his spouse and contains no specific description of behavior that demonstrates the petitioner was subjected to extreme cruelty by his spouse during their marriage. The claim that the petitioner’s spouse was “behaving odd” is too general to support a claim of battery or extreme cruelty.

Similarly, the letter from ██████████, MSW, LCSW, who documented 11 individual counseling sessions with the petitioner, contains no probative details which establish the petitioner’s claim of battery or extreme cruelty. Rather, ██████████ stated that it appeared that the petitioner’s spouse “changed her mind and made a complete reversal in her feelings and attitude toward [the petitioner].” ██████████ further stated that the petitioner’s spouse broke off communication with the petitioner, was not willing to discuss anything, closed the petitioner out, expressed anger and rage, and then locked him out of their apartment and removed his possessions. Finally, ██████████ claimed that the petitioner reported “he was worried he might be targeted for some kind of violence from [his spouse] or her friends,” and that “she was out to destroy his livelihood.” ██████████ does not indicate that the petitioner had actually been threatened by his spouse or her friends, nor does she provide other details to establish why the petitioner felt that he might be “targeted” by them. ██████████ also provided a copy of the progress notes from her sessions with the petitioner. However, the only relevant note indicates that the petitioner “continues to work on healing from wife’s rage and extreme actions.” ██████████ does not document any claimed incident of rage and fails to describe the actions of the petitioner’s spouse that were considered to

² In her brief on appeal, counsel cites to the *Wikipedia* definition of the Wicca religion and states that it is a: “modern survival of an old witch cult [whose] adherents often identify as witches. Wicca religion incorporate [sic] particular ritual forms, involving the casting of spells, herbalism, divination and other forms of magic.”

be “extreme.”

On appeal, the petitioner submits an affidavit, dated August 28, 2006, two affidavits from his acquaintances, and an excerpt from the Internet on Wicca. The excerpt from the *Internet Encyclopedia of Religion* describes Wicca as a:

[C]ult of witchcraft, which centered on a horned god of fertility and a great earth goddess... So-called “Dianic” Wicca focuses on the Goddess as the supreme being and usually excludes men. Wiccans share a belief in the importance of the feminine principle, a deep respect for nature, and a pantheistic and polytheistic worldview. They practice some form of ritual magic, almost always considered good or constructive.

The fact that the excerpt indicates that men are excluded from Wicca, a “good or constructive” form of magic, and that Wiccans believe in the “importance of the feminine principle,” does not establish the petitioner’s claim of battery or extreme cruelty. We note that the petitioner himself has indicated that he was invited to participate in religious festivals with his spouse and many of the photographs submitted in support of his petition capture the petitioner and his spouse at these religious festivals together. Regardless, the excerpt only generally describes Wicca and offers no information on this specific case.

In his August 28, 2006 affidavit, the petitioner reiterates the same basic claims made in his two previous statements. Although the petitioner additionally claims on appeal that his spouse tried to “humiliate” him by saying that he was “depending” on her and that he “may as well become illegal,” the petitioner does not provide any probative details regarding his spouse’s attempt to humiliate him, nor does he describe specific incidents where she made these statements to him.

The statements submitted by the petitioner’s acquaintances on appeal are similarly lacking. [REDACTED] describes the petitioner’s spouse as being “unpredictable” and “aggressive” and states that after their marriage, the petitioner’s spouse “became very abusive” to the petitioner. [REDACTED] does not describe any event specifically or further elaborate on the actions of the petitioner’s spouse except to state that she was “either yelling at him or was not talking to him,” or “den[ie]d having sex with him or . . . threaten[ed] him that she could have him deported.” [REDACTED] claims that the petitioner’s spouse “changed drastically” after their marriage and became “verbally abusive and intolerant to him when things did not happen in a way she wanted.” She does not, however, provide any details of the alleged verbal abuse or describe specific incidents, except to generally state that on one occasion the petitioner’s spouse threatened to have him deported. [REDACTED] also claims that even though the petitioner did not believe in magic, he “was scared” of his spouse. [REDACTED] provides no other details to establish why the petitioner feared his spouse, other than to generally refer to the petitioner’s spouse’s voodoo doll.

In addition, counsel argues that the director erred by discussing only “the volume of the submitted evidence and failing to make a determination as to the credibility of the evidence.” We are not persuaded by counsel’s argument. While it is true that the director must *consider* any credible evidence, the *mere submission* of credible evidence does not automatically establish eligibility. Although the director did not find that the petitioner lacked credibility, his ultimate determination was that the petitioner had failed to meet his burden in establishing eligibility. While counsel may not agree with the director’s determination or conclusions regarding the petitioner’s evidence, as stipulated by the Act and regulation, the determination of the weight to be given to the petitioner’s evidence is within the sole discretion of Citizenship and Immigration Services. Section

204(a)(1)(J) of the Act, 8 C.F.R. § 204.2(c)(2)(i).

As discussed above, we find that the director properly considered all of the evidence submitted by the petitioner and that such evidence was afforded the proper weight. The petitioner's statements and those submitted on his behalf contain no probative details regarding threats of or actual physical abuse perpetrated against him by his spouse. Further, as described, the petitioner's spouse's actions do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

Counsel then argues that the director failed to "consider all the circumstances in their totality" and cites to *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004). Counsel states:

[I]f all the circumstances of the present case are evaluated together, it is clear that the actions of [the petitioner's] spouse amount to a pattern of violence, directed at achieving control over the [petitioner]. And the circumstances in the present case are very unusual.

We do not find counsel's arguments to be persuasive. The actions and incidents described in the petitioner's statements and on his behalf fail to meet the standard described in the *Hernandez*. In *Hernandez*, the petitioner had been violently physically assaulted by her spouse on several occasions. After two assaults, which took place while Hernandez resided with her spouse in Mexico, Hernandez fled to the United States fearing that her spouse would be able to find her in Mexico. After a time, the petitioner's spouse obtained Hernandez's phone number in the United States and persuaded her to let him visit her in the United States. Once in the United States, Hernandez's spouse convinced Hernandez of his remorse and agreed to marriage counseling. The two returned to Mexico where, after a brief period, Hernandez was again brutally attacked by her spouse. After receiving medical treatment for her injuries, the petitioner returned to the United States. The petitioner was placed in proceedings and sought suspension of deportation. The immigration judge denied Hernandez's suspension request finding that her testimony lacked credibility and that she failed to prove that she was a victim of domestic violence. On appeal to the Board of Immigration Appeals (BIA), the BIA reversed the Immigration Judge's adverse credibility determination but concluded that because the physical violence occurred in Mexico, Hernandez was unable to show that she had been battered by or subjected to extreme cruelty in the United States.³ In reviewing the BIA's decision, the 9th Circuit found there was no dispute that the abuse suffered by the petitioner in Mexico would qualify as battery or extreme cruelty. The sole question considered by the Court was whether Hernandez's spouse's actions "in seeking to convince [her] to leave her safe haven in the United States in which she had taken refuge can be deemed to constitute extreme cruelty." *Id.* at 836. In determining that the petitioner had been subjected to extreme cruelty, the court found that the "interaction between Hernandez and her spouse in Los Angeles made up an integral stage in the cycle of domestic violence, and thus the actions taken by Hernandez's spouse in order to lure Hernandez back to the violent relationship constitute extreme cruelty." *Id.*

These facts are not applicable to the instant case in which the petitioner has not shown that there was any cycle of domestic violence. The 9th Circuit recognized that the interaction that took place between Hernandez and her spouse in the United States was during "a well-recognized stage within the cycle of violence," known as the "contrite" phase is both "psychologically and practically crucial to maintaining the batterer's control." *Id.* at

³Although the current law does not contain the requirement that the abuse have occurred in the United States, the law applicable at the time of Hernandez' petition did include this requirement.

828. In the instant case, counsel alleges that the petitioner was forced to submit to his spouse's control and refers to her "dominator-dominated" sexual game. The petitioner, in his August 28, 2006 statement, describes his feelings regarding his spouse's actions in this regard. He states:

She was very happy she participated in a restricted [ritual] about "shape-shifting." It involves taking psychotropic herb tea that induces animalistic sensations and is considered a religious experience. I used to think it was exciting while I was listening to these stories but because her "other shape" was panther she sometimes becoming [sic] very aggressive, especially during sex, requesting that I submit to her control. She used to tell me she is still "shape-shifting" for about two weeks. Except for the dominator-dominated game that she used to base on religious feelings I enjoyed her increased sexual activity.

Although the petitioner indicated that his spouse sometimes became aggressive during sex, contrary to counsel's assertion, the petitioner's statements do not demonstrate that he was forced to submit to his spouse's control. Rather, the petitioner's statements indicate that he had a choice as to whether to participate, that he was often the initiator of sexual activity (although often refused several months into their marriage), and that he enjoyed his spouse's "increased sexual activity." The remaining claims, that his spouse was "demanding and controlling," that she started to demonstrate "anger and aggressiveness," and the evidence that she had obtained a temporary restraining order against him,⁴ do not demonstrate that his spouse's actions amounted to extreme cruelty. As noted by the court, because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship [rises] to the level of domestic violence"

The general claims contained in the record fail to establish that the petitioner was the victim of any act or threatened act of violence or that his spouse'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 petitioner has failed to establish that he was battered or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification pursuant to 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.

⁴ State of Wisconsin, Circuit Court, Dismissal Order (Injunction), Case No. [REDACTED]