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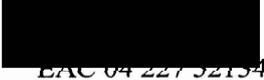
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JAN 17 2007

IN RE:

Petitioner:



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.

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 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 he was battered or subjected to extreme cruelty by his former wife, that he had a qualifying relationship with his former wife and that he was eligible for immediate relative classification based on such a relationship.

On appeal, counsel submits a brief.

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 this provision 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 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 facts and procedural history. The petitioner is a native and citizen of Nepal who entered the United States on January 23, 2003 as the nonimmigrant fiancé (K-1) of [REDACTED], a U.S. citizen. The petitioner married [REDACTED] on February 28, 2003 in Arizona. The former couple was divorced on December 12, 2003. The petitioner filed this Form I-360 on August 2, 2004. On July 14, 2005, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence. On February 24, 2006, the director denied the petition for lack of the requisite battery or extreme cruelty, qualifying relationship and eligibility for immediate relative classification based on a qualifying relationship. Counsel timely appealed.

On appeal, counsel contends that the director only determined that the petitioner's wife did not batter him and failed to consider the petitioner's claim that his wife subjected him to extreme cruelty.

¹ Name withheld to protect individual's identity.

Counsel's claims fail to overcome the grounds for denial and the appeal will be dismissed.

Battery or Extreme Cruelty

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

- The petitioner's undated, written statement;
- The court decree dissolving the petitioner's marriage to [REDACTED] as irretrievably broken on December 12, 2003;
- Printouts of electronic mail messages from [REDACTED] to the petitioner dating between March 2002 and June 2004;
- The September 17, 2004 psychological evaluation of the petitioner by Dr. [REDACTED] and Dr. [REDACTED] September 6, 2005 letter submitted in response to the NOID;
- The October 5, 2004 letter of the petitioner's relative [REDACTED];
- The October 3, 2004 letter of the petitioner's friend, [REDACTED];
- The October 1, 2004 letter of the petitioner's nephew [REDACTED] and [REDACTED];
- A copy of the petition for an order of protection and the order of protection obtained by the petitioner's former wife against him on September 30, 2003.

In his statement, the petitioner reports that he and his former wife began having problems seven months after their marriage. The petitioner states, "she puts me [sic] strong barrier to receive my phone calls from Nepal" and explains that his former wife suspected that calls from his female relatives were from his girlfriends in Nepal. The petitioner indicates that his former wife discouraged him from grooming and wearing good clothes because she was "an old woman" and he was "too young." The petitioner further reports that his former wife brought her ex-husband to their home and hugged and kissed her ex-husband in front of the petitioner. The petitioner also states that his former wife called him derogatory names and spoke to him with profanity.

The petitioner reports that on August 21, 2003, he cooked dinner, but his former wife refused to eat. He states, "I grabbed her hand gently and tried to pull her into the kitchen. That time she pushed me and slapped me on my face and hit me. She used both her hands and legs and threatened to me 'I am going to divorce and cancel your immigration status. You should get out of my house.'" On September 28, 2003, the petitioner states that he cooked dinner, but his former wife again refused to eat. He reports that he told his former wife that if she did not want to eat, then he would throw out the food. The petitioner explains that he went into the kitchen and grabbed the soup, not knowing that his former wife was behind him. When he turned around, the petitioner states that his former wife ran to the bedroom and locked the door. The petitioner reports that a police officer later came to their house, but did not arrest him.

On September 30, 2003, the petitioner states that his former wife came into the house with a police officer who told the petitioner that he had to leave. The petitioner reports that he had no place to go and stayed in a park for five or six days. The petitioner explains, "I did not have money to go to hospital

clinic at that time. We did have family insurance from her work when she kicked me out from home, every thing was gone [sic]. So I had no idea what should I do at that time?" On October 11, 2003, the petitioner states that he was shocked when he received divorce papers from his former wife at work.

The affidavits of the petitioner's friends and relatives fail to support his claim. [REDACTED] who states that he is the petitioner's "nearest cousin brother," explains that he met the petitioner's former wife when she was living in Nepal and became romantically involved with the petitioner. Mr. [REDACTED] states that the petitioner's former wife abused the petitioner, but he does not indicate that he personally witnessed the abuse and does not describe any particular incidents of abuse in detail. Ms. [REDACTED] states that she saw the petitioner on the street on October 1, 2003, when he told her that his former wife had kicked him out of their home. Ms. [REDACTED] relates the prior incidents of alleged abuse as related to her by the petitioner, but indicates that she has no personal knowledge of these events. The petitioner's nephew, [REDACTED] states that he and his family were worried when the petitioner stopped writing and calling them from August to November of 2003 and that the petitioner eventually told his nephew about his former wife's behavior in late November 2003. Mr. [REDACTED] further states that the petitioner's former wife subsequently wrote to him. He states, "She wrote me that my uncle hates her and he just used her to enter into the USA to have an opportunity for making money, which I think is absolutely wrong." Mr. [REDACTED] also states that the petitioner's former wife abused the petitioner, but indicates that he was in Nepal during the alleged incidents of abuse.

In his September 17, 2004 report, Dr. [REDACTED] states that his psychological evaluation of the petitioner is based on two, two-hour interviews of the petitioner with an interpreter. In his September 6, 2005 letter, Dr. [REDACTED] explains that psychological testing was not appropriate given the petitioner's limited English and the dependence of commonly used psychological tests on the patient's command of English and understanding of certain American cultural norms. In his September 17, 2004 report, Dr. [REDACTED] opines that the petitioner's malignant interpretation of his wife's action in inviting her ex-husband to their home might have been misunderstood by the petitioner, given their cultural differences. Dr. [REDACTED] further states: "What seems accurate however is [the petitioner's] report of [his former wife's] overt behavior including the physical abuse and psychological threats. . . . It is my professional opinion that [the petitioner] suffered extreme mental cruelty and that he was a victim of domestic violence."

The petitioner's statements and Dr. [REDACTED] evaluation are contradicted by the statements of the petitioner's former wife in several of her electronic mail messages and her petition for an order of protection against the petitioner. In her January 4, 2004 message to the petitioner, the petitioner's former wife states, "[I]t is not possible to live with such pain[.] [E]ven from the beginning [I] felt you began to hate me, resent me and then my spirit began to die[.] [M]any of your words and actions made me sad and low[.] [I] feared for my life[.]" In her January 21, 2004 message to the petitioner, the petitioner's former wife states, "[W]hat about all your upset and anger? [A]ll the time so much and making me feel so bad, too bad. [I] cannot experience that pain again. [I] cannot live with the worry that you will harm me."

In her September 30, 2003 petition for an order of protection, the petitioner's former wife stated:

Over the past few months, [the petitioner] has become progressively more emotionally abusive and threatening in our relationship. He told me on 9/[illegible]/03 that he would not allow for us to separate and, if we were in Nepal, he would have the right to kill me. I called TPD for assistance on 9/28/03 after he threatened to throw boiling food on me. I am concerned for my physical safety and the impact of his behavior on my son and am fearful that he will become more desperate and potentially more violent due to possibility of deportation related to his actions.

The order of protection issued against the petitioner on September 30, 2003 was effective for one year and states, "You must return to Court to modify (change) or quash (stop) this Order. If you disagree with this Order, you may ask for a hearing by filing a written request for hearing with the Court[.]"

In his September 17, 2004 report, Dr. [REDACTED] states that the petitioner denied that in Nepal a husband would have the right to kill his wife, as claimed by the petitioner's former wife. In his undated statement, the petitioner reports that he turned around **with a pot** of soup in his hand, not knowing that his former wife was standing directly behind him. Dr. [REDACTED] report and the petitioner's statements fail to overcome the fact that the petitioner's former wife obtained an order of protection against him, in part, as a result of this incident. Although the order appears to have been obtained ex parte, the petitioner submits no evidence that he requested a hearing before the court to quash or modify the order. The petitioner also does not explain why his former wife expressed a fear for her life and was frightened that the petitioner would harm her in her January 2004 electronic mail messages.

Those messages and the order of protection issued against the petitioner directly contradict his claim that his former wife battered or subjected him to extreme cruelty. The record fails to overcome this derogatory evidence. Accordingly, the petitioner has not established that his former wife battered or subjected him to 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 Classification

The record also fails to establish that the petitioner had a qualifying relationship with his wife pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Although this petition was filed within two years of the petitioner's divorce from his former wife, the petitioner has not established that the legal termination of their marriage was connected to his former wife's battery or extreme cruelty. As discussed above, the record fails to demonstrate that the petitioner's former wife battered or subjected him to extreme cruelty during their marriage. The record is also devoid of evidence that the former couple's divorce was connected to the alleged battery or extreme cruelty of the petitioner's former wife, rather than the irretrievable breakdown of their marriage. Consequently, the petitioner has not demonstrated a qualifying relationship with his former wife.

The petitioner also fails to demonstrate that he 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 relationship to the abusive spouse. As the petitioner has not established a qualifying relationship with his former wife, he has also failed to demonstrate his eligibility for immediate relative classification based on such a relationship.

The record fails to establish that the petitioner was battered or subjected to extreme cruelty by his former wife during their marriage, that he had a qualifying relationship with his former wife and was eligible for immediate relative classification based on such a relationship. The petitioner is consequently 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.