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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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APR 05 2010

FILE:

[REDACTED]
EAC 09 102 50137

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner: [REDACTED]

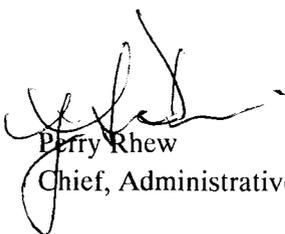
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[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.

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).


Perry Rhew
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 petition will be denied.

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 on November 3, 2009, determining that the petitioner had not established that he had been battered or subjected to extreme cruelty by his United States citizen spouse.

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 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 explained 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

explained 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Peru who entered the United States on April 9, 2003 on a B-2 visa. On March 10, 2005 the petitioner married S-J,¹ a United States citizen. The petitioner noted on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that he resided with S-J- from March 2005 to December 2007. The record includes a Form I-130, Petition for Alien Relative, which was filed on June 2, 2005. The petitioner and S-J- attended two interviews in regard to the Form I-130 petition. The Form I-130 petition was eventually denied on September 22, 2007 when the director did not receive a response to a Notice of Intent to Deny. The record also includes the petitioner's Form I-485, Application to Register Permanent Resident or Adjust Status, which was also filed June 2, 2005. The petitioner in this matter withdrew his Form I-485 application on or about April 9, 2007 and the withdrawal was accepted September 22, 2007. The record also includes the petitioner's final judgment of dissolution of marriage dated November 4, 2008. The petition in this matter was filed on February 20, 2009.

Battery or Extreme Cruelty

In the petitioner's initial undated statement in support of the Form I-360, the petitioner declared that the first few months after marriage were wonderful. The petitioner indicated that one day S-J- told him she

¹ Name withheld to protect the individual's identity.

had quit her job and although she said that she would look for work, she never did. The petitioner noted: that S-J- would go missing on weekends, leaving him to take care of her son; that he wanted to spend weekends as a family but that S-J- did not and that this would cause arguments between them and that S-J- would curse and swear at him. The petitioner indicated further that he did not like S-J- spending time with her son's grandparents and when the petitioner wanted an explanation she would tell him he could not control her. The petitioner stated: that as time progressed, S-J- would get angry for no reason; that she would demand money from him even though he paid most of the bills; that he purchased a newer car for her to use; that he gave her money to take a paralegal course but she did not enroll in the class; and that when he asked her about it, she slapped him in the face in front of her son. The petitioner stated further that when he told her not to slap him, she laughed and told him she was going to have him deported. The petitioner noted his belief that S-J- used his immigration status to her benefit. The petitioner declared that he felt like S-J-'s slave, that she told him she was going to divorce him and not go to the immigration interview, and that she told him that her ex-boyfriend said he was going to send his gang to beat the petitioner. The petitioner declared further that S-J- left him in December 2007 without saying anything and that he had not spoken or seen her since that date and that he divorced her on November 4, 2008.

The record before the director also included a social worker's report dated January 7, 2009, prepared by [REDACTED] a licensed clinical social worker. [REDACTED] noted that the petitioner requested that she prepare a social history and individual assessment and [REDACTED] further noted her understanding that community achievements, the negative effects of domestic abuse, extreme individual and family hardships, and other humane considerations may be weighed in the appropriateness of granting discretionary relief in a particular case. [REDACTED] indicated that her investigation was undertaken in order to explore those factors as they would apply to the petitioner's case. [REDACTED] indicated further that she interviewed the petitioner for an unspecified length of time in order to prepare the report. [REDACTED] noted the petitioner's description of his relationship with S-J- including: that S-J- wanted to have her own life, going out with friends and no obligations; that she wanted the petitioner to support her; that she used his new car and was annoyed when the petitioner questioned her behavior; that she refused to introduce him to her parents and to her friends; that she stopped working when the petitioner got his work permit; that she did not look for another job because daycare was too expensive for her son; that she barely did house chores; that she stayed at her sister's and was at her friend's houses on a daily basis; and that when S-J- left the petitioner was devastated. [REDACTED] also provided similar information as provided in the petitioner's initial personal statement. [REDACTED] concluded that the petitioner married a U.S. citizen who was abusive to him and that the petitioner, as many abused spouses, responded to S-J-'s behavior with acceptance, passivity, and submission; that he stopped doing the things he loved, such as watching sports because he worked two jobs and had long commutes. [REDACTED] summarized her investigation by noting that the petitioner had been anxious and depressed but with the help of friends and family he was learning that it is not his fault and that S-J- was not the right person for him. [REDACTED] noted further that the petitioner was still ashamed of his situation, that he was humiliated that he was not able to change S-J-'s mind, that his ability to trust others had been affected, and that he did not think he would be able to date anybody for a long time.

The petitioner also provided a February 18, 2009 affidavit signed by [REDACTED] who stated: that she witnessed an argument between the couple and that S-J- was very aggressive and offensive even though she knew the affiant was in the house; that the petitioner told her that S-J- had refused to go to the immigration interview and that he would be deported; and that the petitioner told her that S-J- had harmed him physically on two occasions. The petitioner further provided an undated affidavit signed by [REDACTED] who declared: that he and the petitioner would get together on Monday nights to play soccer with a group of friends; that he and the petitioner would chat after playing; and that the petitioner told him about problems in his marriage, indicating that S-J- no longer came home on weekends, that she had turned violent, and then one night after a match the petitioner told him that she had left home. The record included two other affidavits that do not speak of abuse but only that the affiants knew the couple had married.

In response to the director's RFE, the petitioner provided a second personal statement dated September 5, 2009. Regarding the abuse in the relationship, the petitioner stated: that "from the onset of the verbal and emotional abuse until the day that [she] abandoned the marriage," S-J- would insult and demean him on an almost daily basis with curse words; that his former spouse's tone of voice was menacing; that he was afraid that she might assault him; that she isolated him from his friends and family and drew him away from the hobbies that he liked to participate in; that the only time he left the house was to work; that through her actions, S-J- controlled him; that she stopped him from playing soccer once a week; that she demanded money; and that he sunk into a severe depression and still does not want to trust anyone or get close to another woman. The petitioner noted that there were no police reports and that he did not have to seek shelter for the abused.

The petitioner also provided an undated affidavit from his grandfather who declared: that he witnessed an argument between the couple; that he heard S-J- screaming and cursing; and that the petitioner told him the argument was because S-J- wanted to go out and she wanted the petitioner to stay with her son.

On the basis of this information, the director denied the petition on November 3, 2009, determining that the petitioner had described incidents of marital incompatibility and not acts of extreme cruelty. The director noted that although the petitioner's former spouse threatened that she would not attend the petitioner's immigration interview, she did so on two occasions and that the petitioner withdrew his Form I-485 on his own. The director noted that although the petitioner claimed that his former spouse isolated him from friends and family, his friend [REDACTED] declared that he and the petitioner would get together on Mondays to play soccer. The director noted the affidavits submitted on the petitioner's behalf but found that the affiants had not witnessed any physical abuse and although both [REDACTED] and [REDACTED] the petitioner's grandfather, overheard arguing, the arguing did not constitute extreme cruelty. The director also reviewed [REDACTED]'s social worker report and discounted the report as it was based on one interview and the petitioner's rendition of events, and was not sought for therapeutic reasons. The director concluded that the evidence was insufficient to establish that the petitioner had been subjected to battery or extreme cruelty during his marriage to S-J-.

On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion. Counsel asserts that the evidentiary weight of the social worker's report should not be disregarded because the

petitioner had not sought the report for therapeutic reasons. Counsel objects to the lack of weight given to the affidavits of [REDACTED] and the petitioner's grandfather just because they did not witness physical abuse. Counsel notes that many physical altercations occur in the secrecy of the marital home. Counsel asserts that the petitioner's former spouse's threats regarding his immigration status should be considered acts of extreme cruelty. Counsel contends that the record as a whole establishes that the petitioner has been battered or suffered extreme cruelty at the hands of his former spouse. Although counsel indicates that a brief would be submitted to the AAO within 30 days, the record does not include a brief or further evidence. Thus, the record is considered complete.

The AAO finds that the record in this matter does not support the petitioner's claim that he was subjected to battery or extreme cruelty. The AAO has reviewed the petitioner's statements regarding his conflicts with his former spouse and finds little substantive detail regarding the circumstances of the battery or extreme cruelty allegedly suffered. Although the petitioner stated that his former spouse slapped him on one occasion, in front of her son, the petitioner does not provide the probative detail regarding the incident to establish that a battery occurred. The AAO observes that the petitioner did not call the police and did not seek medical treatment. Without substantive information regarding this incident, the AAO does not find that the petitioner established that he was subjected to battery perpetrated by his spouse.

The AAO has also reviewed the petitioner's statements regarding S-J-'s behavior, including insults and cursing. The AAO notes that in the petitioner's second statement he indicated that he found S-J-'s tone menacing and that he was afraid that she might assault him. However, the petitioner does not provide evidence that any of the arguments escalated into physical violence and while the insults and demeaning language is hurtful, unkind, and inconsiderate, such behavior does 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. The AAO finds that the petitioner's general statements regarding the interaction between him and his former spouse reflect a deteriorating marriage. The petitioner does not provide evidence that he was controlled by his spouse or that he had reason to fear her. The AAO acknowledges the petitioner's claim that S-J- referenced the petitioner's immigration status and indicated that he could be deported; however, as the director noted his former spouse appeared with him at two immigration interviews in regard to the petition that she filed on his behalf. In addition, the petitioner's statements refer generally to these "threats" and are insufficient to establish that his former spouse's non-violent actions constituted psychological abuse or were otherwise part of an overall pattern of violence.

The AAO also finds inconsistencies in the petitioner's testimony. For example, in his initial statement the petitioner indicated that he purchased a newer car for his former spouse to use but while discussing this purchase with the social worker, the petitioner intimates that the newer car was his to use and that his former spouse's use of the car caused arguments. The petitioner also indicated in his second statement that his former spouse isolated him from friends and family; however, as the director noted, [REDACTED] declared that he and the petitioner played soccer together on Monday nights and [REDACTED] learned of S-J-'s leaving the petitioner at one of those games. Further, the petitioner told the social

worker that he stopped doing the things he loved, such as watching sports because he worked two jobs and had long commutes, not because of his former spouse's behavior.

The AAO also agrees with the director's consideration of the affidavits submitted on the petitioner's behalf. The affidavits do not provide substantive information regarding battery or extreme cruelty but only information of a couple arguing. The AAO finds that the statements submitted on the petitioner's behalf reflect the turmoil of a dysfunctional marriage. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter, he has failed to do so.

The AAO has also reviewed the January 7, 2009 report prepared by [REDACTED] and does not find that [REDACTED] provided specific examples of the causal relationship of claimed abuse that is consistently detailed to the petitioner's depressive symptoms that exist over one year after the claimed relationship ended. The AAO finds that [REDACTED] has provided a report that confirms that the petitioner was involved in a disintegrating relationship and although the AAO understands that the break-up of a marriage may cause heartache and depression, not all marital discord constitutes extreme cruelty as that term is interpreted in the regulation. The report prepared by [REDACTED] lacks probative value as it does not include a reasoned opinion based on specific facts and clinical observations of the petitioner's behavior and affect during the evaluation that support a conclusion that the petitioner presented with symptoms and characteristics of an abused spouse. The AAO observes that the petitioner continued to work, to exercise his free will, and to instigate divorce proceedings, actions that do not demonstrate that S-J- controlled the petitioner or otherwise subjected him to extreme cruelty.

The petitioner has provided general statements that in and of themselves do not establish credibility and are sufficiently vague as to not lend themselves to evaluations regarding credibility. In addition to the generality of most of the information in the record, the petitioner has also submitted inconsistent information. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO declines to accept generic information with little chronological timeline and inherent inconsistencies to establish eligibility for this benefit.

Beyond the director's decision, we find that the petition is not approvable because the record fails to establish that the petitioner has a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen and is eligible for immediate relative classification based on a qualifying relationship with his former wife. An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) 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). As previously noted, the petitioner in this matter divorced his spouse on November 4, 2008 and he filed the instant Form I-360 on February 20, 2009. As the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his former

spouse, he has also failed to make the causal connection between his divorce and any abuse. Accordingly, the petitioner is also not eligible for the benefit he seeks because he did not establish a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen. The petitioner has also failed to establish that he is eligible for immediate relative classification based on a qualifying relationship with his former wife.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. The petition is denied.