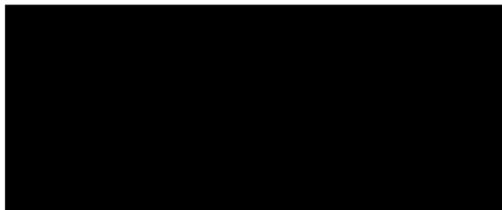


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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FILE:



Office: VERMONT SERVICE CENTER

Date: DEC 17 2010

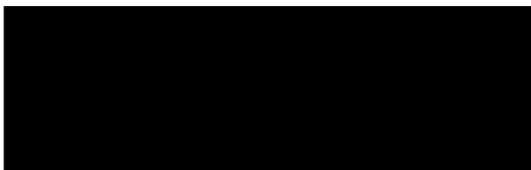
IN RE:

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially denied the immigrant visa petition. The petitioner appealed that decision to the Administrative Appeals Office (AAO), but the director treated the appeal as a motion to reopen or reconsider, determining that the appeal was untimely filed. The director affirmed his decision to deny the petition and the petitioner has appealed that decision, which is now before the AAO. The appeal will be dismissed. The petition will be denied.

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 his United States citizen spouse.

On July 8, 2010, the director affirmed his decision to deny the petition, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and letters from two mental health counselors in support of the 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 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 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 Cambodia. He entered the United States on June 4, 2006 on a K-1 visa. On July 5, 2006, the petitioner married R-R¹, the claimed abusive United States citizen. On December 17, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On the Form I-360, the petitioner indicated that he had resided with R-R- from June 2006 to February 2007. The marriage was dissolved on June 5, 2008.

Abuse

In support of the petitioner's claim that he was subjected to battery and extreme cruelty, the record includes:

¹ Name withheld to protect the individual's identity.

- The petitioner's March 8, 2008 statement, May 9, 2009 statement, and March 29, 2010 statement;
- A March 1, 2008 affidavit signed by [REDACTED] on March 5, 2008;
- An April 22, 2009 affidavit signed by [REDACTED] on April 23, 2009;
- An April 17, 2009 affidavit signed by [REDACTED] on April 23, 2009;
- A copy of the Judgment Dissolving the Marriage dated June 5, 2008;
- A May 28, 2010 letter signed by [REDACTED], Mental Health Counselor;
- A July 28, 2010 letter signed by [REDACTED] Project Director and Social Worker with the Cambodian Association of Illinois; and
- Photographs, bank statements, and the petitioner's handwritten work schedule.

In the petitioner's March 8, 2008 statement, he indicated that he and his former spouse resided with his parents-in-law in Connecticut and that his parents-in-law asked that he work 12 hours a day, six days a week in one of the liquor stores they owned for a monthly salary of \$200 and that they also asked him to mow the lawn and clean their swimming pool. The petitioner noted that he was not paid for four months and contacted his father in Cambodia about the situation and his father talked to his parents-in-law. The petitioner noted further that his brother-in-law looked down on him and used improper words and did not respect him. The petitioner indicated that he saw his former wife twice with another man. The petitioner indicated that the first time he saw his former wife with another man was when he came home for lunch and saw her hugging and kissing the man and that night he talked to her about the incident, but she refused to discuss it and bumped against him with her shoulder. After informing his parents-in-law about the incident, they told him that if he could not accept the situation he would have to leave their house and if he pursued the matter they would send him back to Cambodia. The petitioner indicated that two weeks later, he saw his former wife and the same man having sex in their bedroom.

In the petitioner's second statement, dated May 9, 2009, the petitioner added that his parents-in-law denied his request to learn English and to take the driver's license exam. The petitioner indicated that when he wanted to visit his dying grandfather in South Carolina, his parents-in-law refused but that he went anyway and was gone from January 6 to January 21, 2007 and when he returned he apologized to his parents-in-law. The petitioner stated that his parents-in-law pledged that when he married their daughter they would pay him \$9 an hour for a 40-hour week but that they did not honor their pledge, and they also failed to include him in family gatherings. He added that his mother-in-law asked that he open a bank account with his spouse and that although it was a joint account he was not allowed to access the account. The petitioner noted that his parents-in-law paid all the expenses of his wife while she continued to study in high school and that she rarely stayed at home. The petitioner added that when he first saw his former spouse with a man in their bedroom, he felt faint and fell down and when he asked her about it, she looked straight at him and walked by his shoulder shouting "stupid" at him and then left in a car with the man. The petitioner indicated that the "second time [he] saw her sleeping with that man on bed in [his] own bedroom" and when he told her he was going to end the relationship, she said that if he did he would not get a green card. The petitioner noted that after speaking to his former spouse's parents and receiving no help from them he called an aunt in Chicago, Illinois who gave him air fare and temporary accommodation.

In the petitioner's third statement, dated March 29, 2010, the petitioner added that this former spouse would not let him use the phone or the computer, that she sometimes subjected him to verbal abuse, that she made fun of him in front of her friends, and when he asked if he could go out with her, she told him no. The petitioner added that when he saw his former spouse having sex with her friend in his bedroom, she rushed at him and pushed him to get out of the room and his left shoulder hit the door, and after she was ready to get dressed, she walked over and hit his left shoulder again and shouted "stupid" at him. The petitioner also added that his former wife threatened to call the police and tell them that he had threatened to "lay hands on her." The petitioner noted that he left the house soon after, arriving in Chicago on February 26, 2007.

In the affidavits of [REDACTED] the affiants, who all live in Chicago, Illinois, declare that the petitioner told them of the problems he had with his former spouse and his former parents-in-law. The affiants do not indicate that they witnessed any incidents of abuse. In the judgment dissolving the marriage, the judge noted that the petitioner's former spouse had not appeared or responded to the complaint and determined that the petitioner's former spouse had been "guilty of extreme and repeated physical and mental cruelty without cause or provocation by the petitioner."

In the July 8, 2010 decision, the director observed that the petitioner's three statements contained significant inconsistencies regarding his interactions with his former spouse and her alleged infidelity. The director found that the petitioner for the first time added in his third statement that his former spouse subjected him to physical abuse. The director found that the petitioner's inconsistent reporting brought the reliability of his statements into question and that the petitioner had not offered any corroborating evidence to support his claims.

On appeal, counsel for the petitioner asserts that the petitioner's statements are not materially inconsistent and that the "bumping" and "hitting with the shoulder" are equally unwanted forms of touching which amount to battery. Counsel also contends that the director failed to understand the significance of the aerial photographs of the petitioner's former parents-in-law's estate which depict the size and difficulty the petitioner had in mowing the lawn and cleaning the pool, in addition to working 12 hour days, six days a week. Counsel further asserts that the director failed to understand the significance of the petitioner's pictures and his driver's license which document his weight loss caused by the petitioner having to work 12 hour days, six days a week where only two people worked at the store at one time. Counsel asserts that the petitioner has provided evidence that he has been battered and/or subjected to extreme cruelty by his former spouse sufficient to warrant approval of the Form I-360.

Counsel also submits two letters prepared by mental health professionals in support of the petitioner's claim. In the May 28, 2010 letter prepared by [REDACTED] [REDACTED] notes that the petitioner has received ten individual counseling sessions in which the issues of "verbal, emotional, and psychological abuse exacted upon [the petitioner] by his ex-wife and ex-parents-in-law during his marriage of two years from July 5, 2006 to June 5, 2008" had been

addressed. [REDACTED] opines that the petitioner suffers from post traumatic stress disorder resulting from the abusive experiences during his marriage. In the July 28, 2010 letter prepared by [REDACTED] she indicates that the petitioner approached her to discuss his history of abuse and continuing symptoms of mental distress. [REDACTED] notes that the petitioner's former wife and parents-in-law threatened to not help the petitioner get his green card, would yell, insult, threaten, and throw and break bottles in order to intimidate the petitioner and keep him from leaving the house. [REDACTED] notes that the petitioner describes symptoms that are consistent with post traumatic stress disorder and depression and recommends that he continue receiving mental health services with his current provider.

Upon review of the petitioner's statements, the AAO concurs with the director's observation that the petitioner's additional testimony conflicts with his initial statements. In addition, the petitioner has escalated the nature and type of abuse in each of his successive statements, as well as the information he provided to [REDACTED], as related in her letter submitted on appeal. The petitioner has not presented a consistent version of his interaction with his former spouse when he discovered her association with another man. For example, the petitioner noted that he first observed his former spouse hugging and kissing another man at lunch time and that night when he talked to her about what he observed, she refused to discuss the matter and bumped him with her shoulder. He noted that two weeks later he saw the couple having sex in the bedroom. In the petitioner's second statement, the petitioner noted that he felt faint and fell down when he observed his former spouse hugging and kissing another man and when he asked her about it, she "walked by his shoulder" and shouted "stupid" at him, and she left with the other man. In the petitioner's third statement, he only refers to one incident, an incident when he saw his former spouse having sex with her friend and at that time, he declares that she rushed at him, pushed him to get out of the room, his left shoulder hit the door and then she walked over to him and hit his left shoulder again and shouted "stupid" at him. In the first and second statement, the petitioner does not describe in detail any physical altercation, and notes that his former spouse "bumped" him with her shoulder. In the petitioner's third statement, he fails to mention two incidents, instead mentioning only his observation of his former spouse's adultery and adding a slight physical altercation between him and his former spouse. Contrary to counsel's assertions, these inconsistencies are material. Because the petitioner's testimony is critical in establishing extreme cruelty or battery, his statements must include sufficient consistent detail of specific events and incidents to result in a determination that he was subjected to battery or extreme cruelty. In this matter, the petitioner has not provided a consistent detailed account of his interactions with his former spouse.

In addition, the petitioner has escalated the severity and type of abuse with each successive statement. Initially, the petitioner complained primarily of his former in-laws' treatment and noted only that his former spouse was still in high school and that he had observed her with another man on two occasions. In his second statement, he again noted his former spouse's infidelity and added her comment that if he left her he would not get a green card. The majority of the petitioner's second statement revolved around his in-laws' treatment of him. In the petitioner's third statement, he adds that his wife did not allow him to use the phone or computer, made fun of him in front of her friends, cursed him, would not go out with him, and added that she physically pushed him and hit his

shoulder. Thus, when the petitioner filed the petition, his claim of abuse focused on his former spouse's infidelity and her parents' treatment of him. However, by the time the petitioner provided a response on motion, his claim of abuse had expanded to include repeated verbal and derogatory abuse, controlling behavior and physical abuse. This escalation of the nature and severity of the alleged abuse amounts to inconsistent testimony on the part of the petitioner, which undermines the credibility of his testimony. The director in this matter noted that the petitioner had not provided any corroborating evidence of his claims that he had been subjected to battery or extreme cruelty perpetrated by his former spouse. Although corroboration is not a prerequisite to establishing that an individual has been subjected to battery or extreme cruelty, the petitioner must provide credible testimony that he has been subjected to battery or extreme cruelty perpetrated by his former spouse in order to meet his burden of proof. In this matter he has failed to do so.

The petitioner's primary complaint appears to be with the treatment he received at the hands of his in-laws. In his statements he indicates that he was made to work long hours, mow the lawn, and clean the pool, and that he was not paid for his work as promised. It is not clear from the bank statements submitted or the petitioner's testimony how and why he would lack control of a jointly established account. It is not apparent from his statements that his former spouse instigated or was otherwise a proximate cause of the claimed mistreatment by his former in-laws. Moreover, the record does not substantiate that the petitioner suffered extreme cruelty as defined in the statute and regulation perpetrated by his former in-laws. The record does not include sufficient detailed information regarding the petitioner's lack of salary, his long hours, his mowing the lawn and cleaning the pool, to demonstrate that he was subject to the control and/or abuse by his in-laws, as set out in the regulation and statute. The petitioner was able to leave the house in Connecticut and travel to North Carolina, in January 2007 and he left Connecticut permanently in February 2007. Furthermore, counsel's assertion that the petitioner's weight loss was due to his arduous work schedule, is not supported in the record with medical documentation. The AAO recognizes the difficulty of the petitioner's transition to the United States, but the record does not include consistent probative evidence that demonstrates that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty as set out in the statute and regulation. The petitioner has failed to establish that his spouse's actions or the actions of others rose 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 record is insufficient in this regard.

As the director observed, the court's findings of fact in the judgment dissolving the petitioner's marriage are of little probative value because the judgment states that the petitioner's former spouse did not appear in court and did not file any counterclaims, and hence, the divorce was granted in default. Accordingly, the default judgment was based entirely upon the petitioner's own assertions. Furthermore, the petitioner has not presented any evidence that the term "extreme and repeated physical and mental cruelty without cause or provocation" as cited in the judgment of divorce is equivalent to the definition of battery or extreme cruelty as set out in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Similarly, the affidavits submitted on the petitioner's behalf do not provide any information about

specific incident(s) of abuse. As the director observed, the affiants do not indicate that they witnessed any specific incidents that could be considered battery or extreme cruelty as set out in the statute and regulation.

Upon review of the two letters prepared by mental health professionals submitted on appeal, we note that the petitioner again appears to escalate the type and severity of the abuse by reporting to [REDACTED] that his former wife and parents-in-law threatened to not help the petitioner get his green card, and would yell, insult, threaten, and throw and break bottles in order to intimidate the petitioner and keep him from leaving the house. Again, the previous record provided by the petitioner does not correspond with the petitioner's report to [REDACTED]. In addition, although the petitioner attended ten individual counseling sessions with Asian Human Services, he failed to reveal that he resided with his former spouse in Connecticut for only eight months, not the two years [REDACTED] apparently believed was the length of time he was allegedly subjected to "verbal, emotional, and psychological abuse exacted upon [the petitioner] by his ex-wife and ex-parents-in-law." Moreover, neither [REDACTED] nor [REDACTED] offer a diagnosis that is causally connected to specific incidents of battery or extreme cruelty as defined in the statute and regulation. Thus, their reports are of little probative value.

Upon review of the petitioner's statements, the affidavits submitted on his behalf, and the letters from the two mental health professionals, the petitioner has not established that he was the victim of any act or threatened act of physical violence or extreme cruelty, that R-R-'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. The petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his spouse, or that she instigated others to commit acts of battery or extreme cruelty against him. Accordingly, the petitioner has not established eligibility for this benefit.

The petition will be denied and the appeal dismissed for the above stated reason. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed.