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



U.S. Citizenship
and Immigration
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **FEB 24 2010**
EAC 06 077 52037

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:



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 March 6, 2007, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty by his spouse.

On appeal, counsel submits a brief and additional affidavits.

We concur with the director's determination that the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his spouse, L-J-¹.

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 also 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,

¹ Name withheld to protect individual's identity

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 Turkey who married L-J-, a United States citizen on October 3, 2004 in the State of Nevada. The petitioner stated on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that he resided with L-J- from September 2004 to November 2005. The director in this matter issued a request for further evidence (RFE) on April 29, 2006, informing the petitioner that the evidence submitted to show that he had been subjected to battery or extreme cruelty was deficient. The petitioner provided a response through counsel. On July 27, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, notifying the petitioner that the director was unable to establish a positive finding based on the evidence of the record and requested that the petitioner provide any further evidence that would overcome the NOID. The petitioner provided a response through counsel. Upon review of the evidence submitted, the director denied the petition on March 6, 2007 and counsel timely appealed.

On appeal, counsel asserts that the director misconstrued the police report submitted and failed to give probative value to the psychological evaluation and affidavits submitted. Counsel submits

additional affidavits.

Battery or Extreme Cruelty

The petitioner initially submitted a January 11, 2006 statement in support of his claim that his wife subjected him to battery or extreme cruelty during their marriage. The petitioner also submitted an illegible police report. The petitioner, in his personal statement, indicated that after seven or eight months of marriage “things started to change in a way that L-J- wanted to take control of me and my life and in her words showing me who is the boss.” The petitioner noted that L-J- would blame him for anything in order to start a fight and find excuses so that she could go out with her friends to drink. The petitioner indicated that L-J- told him that her friends thought that he had married her for immigration purposes, but that L-J- knew this was not true. Even so, the petitioner stated that L-J- would tell him she would send him back to the caves where he was from unless he let her do what she wanted to do. The petitioner noted that his wife passed out in her car from drinking and he was called by the police, and although he warned her to not drink and drive she continued to do so. The petitioner also noted that his wife’s friends told her she did not have an alcohol problem and after listening to her friends she would pick a fight with him, throw the remote at him, cuss him, and tell him she would call the cops and tell them what he did and they would deport him. The petitioner related incidents where he found his wife out drinking with other men, lying on the phone about him, accusing him of having affairs, spying on him, coming home drunk and passing out, and calling him derogatory names. The petitioner noted in one incident L-J- threw a cell phone at him, tried to hit his face, and pushed him. He stated he was afraid to stop her because he had been told he could not touch her under Nevada law, so he called a friend who picked him up. The petitioner also mentioned that L-J- used all the money in their savings account and constantly over drafted their checking account.

The petitioner also offered his explanation of the police report submitted with the Form I-360. The petitioner noted that on this occasion L-J- was supposed to pick him up from school, but when she did not show up he started walking home. He indicated that on his way home she showed up in the car but was drunk and he refused to get in the car. She threw his keys at him, began cursing at him and she started to walk off. The petitioner explains that when she started to walk off “he touched her elbow” to get her into the car and when he did a police officer saw them. The petitioner indicated that the police told him he could not touch her. The initial record included an illegible police report of this incident.

In response to the director’s RFE, the petitioner provided a legible copy of the police report of this incident showing that it occurred on October 20, 2005. The police report identified L-J- as the victim of the incident but noted that no battery had occurred, that L-J- had been drinking, that the petitioner and L-J- had a “heated verbal argument,” and that L-J- was not in fear of being battered.

Also in response to the director’s RFE, the petitioner submitted a June 7, 2006 psychological evaluation prepared by [REDACTED], based on two visits [REDACTED] had with the petitioner (on May 24, 2006 and May 31, 2006) for one hour each. [REDACTED] reported that the petitioner indicated that he had

been divorced for approximately one week at the time of the petitioner's first visit.² [REDACTED] noted that the petitioner discussed L-J-'s alcoholic lifestyle including L-J-'s provocation of the petitioner into arguments to use the conflicts as an excuse to become intoxicated. [REDACTED] noted the petitioner's report: that L-J- would verbally berate and threaten him; had physically attacked him on three occasions; and would destroy objects in their home. [REDACTED] noted his belief that the petitioner "has been and continues to some degree to be a victim of physical violence and extreme mental abuse by his former wife, L-J-." [REDACTED] suggested diagnostic impressions included depressive disorder, erectile disorder, acute stress disorder, acculturation problem. [REDACTED] did not recommend any treatment.

In response to the director's NOID, the petitioner provided another copy of the police report and an August 22, 2006 affidavit from his former spouse, L-J-. In the affidavit, L-J- acknowledged that she had a drinking and gambling problem, that she lied to the petitioner about it, and that she and the petitioner would argue about it. L-J- noted that her drinking severely impacted her relationship with the petitioner, that they would fight and she would promise to get help but she never did. L-J- indicated that she called the petitioner gay because he did not want to sleep with her and that she often blacked out and could not remember what she had said or did to the petitioner. L-J- stated that the petitioner finally could not take it anymore and left her in January 2006.

On March 6, 2007 the director denied the petition. The director found that the psychological evaluation submitted did not have sufficient evidentiary weight to make a positive determination regarding the petition, in part because the statements the petitioner made to [REDACTED] were not adequately corroborated by other relevant evidence in the record. The director found that the affidavit of L-J- was insufficient to establish that the petitioner had been subjected to battery or extreme cruelty as L-J- had noted that she did not have full knowledge of the events she was attesting to as she often had been drinking excessively. The director concluded that the petitioner had not submitted sufficient credible documentation to demonstrate that he had been battered or subjected to extreme cruelty by L-J- during the qualifying relationship.

On appeal, counsel for the petitioner asserts that the police report serves to demonstrate a pattern of overall violence and the use of the involvement of police by the petitioner's spouse to threaten the petitioner. Counsel notes that a psychologist must use an individual's account of events to make a determination regarding the individual's case and that the director disregarded the psychologist's determination which was based on his professional experience. Counsel contends that the petitioner's spouse's affidavit corroborates the petitioner and [REDACTED] statements and that the director failed to consider its probative value. Counsel also notes that the affidavits submitted on appeal corroborate the petitioner's statements that his former spouse: accused him of having an affair, cursed at him in public, and spied on him (statement of [REDACTED]); was abusive, screamed at him, and called him gay (affidavit of [REDACTED] spent all the couple's money [REDACTED]; and drank behind the petitioner's back (affidavit of [REDACTED]). Counsel also references the affidavits of: [REDACTED]

² The record does not include further information regarding the status of the petitioner's marriage. Counsel for the petitioner on appeal refers to L-J- as the petitioner's spouse, not as his former spouse. Thus, the record remains unclear regarding the status of the marriage.

██████████ who stated that the petitioner had to spend the night at her house because the petitioner was afraid that L-J- would start a fight and call the police and accuse the petitioner of hitting her and her daughter; and ██████████ who noted that the petitioner dropped a course and told him it was because of his marriage and his wife's problems. Counsel concludes that the petitioner has provided sufficient credible documentation to establish that he has been battered by or had been the subject of extreme cruelty perpetrated by his spouse.

The AAO has reviewed the petitioner's statements, affidavits, and police report for any evidence that the petitioner had been subjected to battery perpetrated by his spouse. The AAO notes that the petitioner indicated that his wife threw a remote at him, threw a cell phone on his chest, tried to hit his face on what appears to be two different occasions, and pushed him. ██████████, in her April 10, 2007 statement, indicated that she saw L-J- push the petitioner's arm and make him drop his books and ██████████ in his April 2, 2007 statement, indicated that at a restaurant where L-J- had been drinking, he saw her push the petitioner when the petitioner tried to take her home.

██████████ noted that the petitioner reported that his wife assaulted him physically on three occasions. The petitioner in this matter does not provide the necessary information to establish that these incidents escalated to a point that would constitute a physical assault. The petitioner's statements are general and do not provide the necessary detail describing his physical or mental injuries, if any, from these incidents. The petitioner's information regarding these incidents all include the information that L-J- was intoxicated when these incidents occurred and appear to be the actions of an obnoxious drunk. The two statements submitted that include a reference to physical contact between the petitioner and L-J- do not provide sufficient information to conclude that the petitioner suffered a physical assault. As the director noted, ██████████ conclusion that the petitioner has been a victim of physical violence is based upon the petitioner's rendition of events. As observed above, the petitioner's statement to United States Citizenship and Immigration Services (USCIS) does not provide sufficient detailed information to determine that he was subject to battery perpetrated by his spouse. The record does not include sufficient detail of these occurrences sufficient to allow a conclusion that L-J-'s alleged actions constituted battery.

Upon review of the record, the AAO does not find that the petitioner has been subjected to extreme cruelty as defined by the statute and regulation. The AAO observes that the petitioner's wife's alcoholism and alcoholic lifestyle negatively impacted the marriage. Although L-J-'s alcoholism disrupted the marriage and caused the petitioner emotional upset, the record does not support a conclusion that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that L-J-'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. Again, the petitioner's spouse's actions appear to be the result of alcoholism and although alcoholism does not excuse the petitioner's spouse's behavior, the behavior does not include actions that constitute extreme cruelty.

The AAO observes that the incident related in the police report and the police cautioning the petitioner that he could not harm L-J- may have increased the petitioner's concern regarding his immigration status in the United States. The record, however, lacks detail to establish that the

petitioner's wife used this incident to threaten the petitioner with deportation. The AAO has reviewed the petitioner's statement to determine if the petitioner provided sufficient detailed information regarding L-J-'s threats to report him to immigration and finds that the petitioner primarily noted that he felt he was unable to do anything to L-J- when she was intoxicated because she might report him to the police. The petitioner's statement refers only to indirect threats on a few unspecified occasions. As described, L-J-'s actions, while unkind and abhorrent, 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; rather L-J-'s actions appear to be those of a troubled alcoholic. The AAO acknowledges the petitioner's difficulties in living with an alcoholic and the different personalities an alcoholic individual might manifest, as well as the emotional turmoil caused by dealing with an alcoholic. However, the record in this matter does not include evidence that the petitioner's spouse's excesses, including name calling, cursing, and drinking escalated to such a degree that her actions constituted extreme cruelty.

The AAO has reviewed the petitioner's spouse's statement and notes L-J-'s discussion of her arguments with the petitioner brought on by her heavy drinking and drinking and driving. In her statement, L-J- does not acknowledge physical assaults or threats but rather acknowledges that her drinking negatively impacted the marriage. The AAO has also reviewed the statements submitted on appeal on behalf of the applicant. These statements again relate that L-J- was an obnoxious drunk and that she embarrassed her husband in public by her alcoholic behavior. The statements do not reveal information that is indicative of extreme cruelty perpetrated by the petitioner's spouse as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The record does not provide sufficient probative detail of the acts of L-J- over the one-year relationship to allow the AAO to ascertain that L-J-'s actions subjected the petitioner to psychological, sexual abuse or exploitation or were part of an overall pattern of violence. The record does not include specific details regarding the time of any threats or coercive actions, the number or content of threats of coercive actions, or that the petitioner perceived any of the threats or other actions against him as serious enough to involve the actions of the police.

The AAO has further reviewed the evaluation prepared by [REDACTED]. The AAO notes that [REDACTED] evaluation was based on two-one hour sessions one week apart. [REDACTED] provides no chronological, clinical, or substantive details of the petitioner's wife's alleged abuse. Although the AAO accepts [REDACTED] professional training and experience, he does not provide a record of events that corroborate and detail the petitioner's wife's actions, but rather provides conclusory and general observations. For example, the AAO observes that [REDACTED] does not provide examples of the causal relationship of specific abuse that is consistently detailed to his suggested diagnostic impressions of the petitioner including depressive disorder, erectile disorder, acute stress disorder, and acculturation problem. [REDACTED] does not detail the underlying trauma or causative factors that support his general diagnostic impression. The AAO notes as well that [REDACTED] does not recommend that the petitioner seek medical help or a medical examination and evaluation for depression, or indicate that he treated or recommended any treatment for the petitioner. The AAO finds that the evaluation prepared by [REDACTED] lacks probative value as it does not include a reasoned opinion based on facts and clinical

observations of the petitioner's behavior and affect during the evaluation that support a conclusion that the petitioner "has been, and continues to some degree to be a victim of physical violence and extreme mental abuse by his former" wife.

Upon review of the totality of the record, the AAO affirms the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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.

ORDER: The appeal is dismissed. The petition is denied.