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

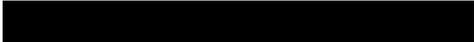


U.S. Citizenship
and Immigration
Services



B9

DATE: **AUG 01 2011** Office: VERMONT SERVICE CENTER FILE: 
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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:

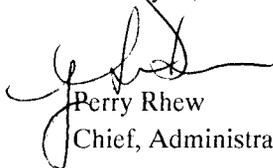


INSTRUCTIONS:

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 a fee of \$630. 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, 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 remain denied.

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 United States citizen.

The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse or that he had entered into the marriage in good faith. On appeal, counsel submits a brief and additional documentation.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are set forth 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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Facts and Procedural History

The petitioner is a native and citizen of India. He entered the United States on October 17, 1998 on a B-2 visitor's visa with temporary authorization to remain in the United States until March 31, 1999. He married J-T-,¹ a United States citizen on April 10, 2001. J-T- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on April 27, 2001 and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on the same date. The Form I-130 and Form I-485 were denied on November 1, 2002. A Judgment of Divorce terminating the marriage between the petitioner and J-T- was entered on March 1, 2003. On June 17, 2004, the petitioner married M-G-,² the claimed abusive United States citizen. On August 16, 2004, M-G- filed a Form I-130 on the petitioner's behalf and the petitioner concurrently filed a Form I-485. On April 28, 2008 the Form I-130 and Form I-485 were denied and the petitioner was subsequently placed in removal proceedings before an immigration judge. On November 16, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that he resided with M-G- from September 1999 until May 2009. On March 18, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by M-G- or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief, and additional documentation.

Due Process

Counsel asserts that the petitioner's right to due process was violated by his former counsel's conduct and requests an I-360 interview to address United States Citizenship and Immigration Services' (USCIS) concerns.

Counsel has not provided any evidence or argument that the petitioner's prior counsel's conduct violated the petitioner's right of due process. The AAO observes that any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). In this matter, counsel has not provided evidence that satisfies any of the criteria set out in *Matter of Lozada*. Moreover, although counsel references a violation of the petitioner's right to due process, counsel again has not provided any evidence or argument that demonstrate a violation of the regulations or the Act or that any claimed violation resulted in

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

“substantial prejudice” to him. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien “must make an initial showing of substantial prejudice” to prevail on a due process challenge). A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner’s case. The petitioner’s primary complaint is that the director denied the petition. As will be discussed, the petitioner has not met his burden of proof and the denial was the proper result under the statute and regulation.

Battery and Extreme Cruelty

The petitioner initially provided no evidence that he had been subjected to battery or extreme cruelty perpetrated by M-G-. In response to the director’s RFE, the petitioner submitted a March 22, 2010 signed statement. He declared that he resided with M-G- from the date of their marriage until April 2009 and that he and M-G- enjoyed the first two years of their marriage; but in 2006, the father of M-G-’s son started visiting them and asking for money for child support for the child’s grandmother and that M-G- started abusing him in front of her boyfriend and son by hitting and humiliating him. The petitioner listed four incidents of abuse alleging: (1) M-G- kicked him and called him names at a Christmas party on December 24, 2008 when she was drunk; (2) M-G- got drunk was abusive and kicked him on August 5, 2009 at a social party; (3) M-G- became abusive and pulled his turban on November 5, 2009 at a friend’s son’s birthday party; and (4) M-G- hit him and called him names on June 24, 2009 at his friend’s birthday.

In a statement signed by [REDACTED] on March 24, 2010, Mr. [REDACTED] listed the same brief account of the incidents of abuse described by the petitioner that allegedly occurred on December 24, 2008 and November 5, 2009. In a statement signed by [REDACTED] on March 23, 2010, Mr. [REDACTED] listed the same brief account of incidents of abuse described by the petitioner that allegedly occurred on December 24, 2008 and June 24, 2009. In a statement signed by [REDACTED] on March 23, 2010, Mr. [REDACTED] listed the same brief account of incidents of abuse described by the petitioner that allegedly occurred on December 24, 2008 and August 5, 2009.

The record also included: a copy of an appointment card regarding the petitioner’s April 20, 2010 appointment with [REDACTED]; a copy of a March 18, 2010 prescription ordered by [REDACTED] copies of prescriptions dated April 20, 2010, May 20, 2010; and a May 20, 2010 letter signed by [REDACTED] noted in her letter that the petitioner had been under her care for treatment of depression from April 20, 2010.

Based upon the limited and inconsistent information in the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty. Counsel contends that the doctor’s opinion relied on a clear link between the spousal abuse and the petitioner’s depression, that medical records show that the petitioner’s medical condition deteriorated as the spouse “became somewhat mentally cruel to him”, and that the petitioner’s friends indicate that the petitioner’s spouse abused him by physically kicking him when she got drunk.

On appeal, the petitioner provides a second statement dated February 11, 2011 which mirrors his first statement and does not provide further details. The petitioner also re-submits his first

statement and the three statements signed by his friends. The petitioner provides a February 17, 2011 letter written by [REDACTED] who indicates that he saw the petitioner initially on February 17, 2011 and that the petitioner complained of depression, anxiety, and insomnia for the past one and one-half years. [REDACTED] also indicates that the petitioner reported that he married in 2004, applied for a green card and was denied, and in 2009 his wife left him for another man. In a March 16, 2011 letter also signed by [REDACTED] states that the petitioner reported that shortly after his marriage to M-G-, he discovered that his wife was involved in a relationship with another man and had a son from that relationship. The petitioner further reported to [REDACTED] that the marriage quickly deteriorated as the man would come to the house and the man and M-G- would verbally and physically abuse him and over the next few months M-G- continued to verbally and physically abuse him and kick him in front of his friends. [REDACTED] indicates that the petitioner reported that the union did not last long and his wife went back to her former lover. [REDACTED] notes that the petitioner was heartbroken over the break up of his marriage and sought treatment for depression at the St. Vincent's Medical Center and was prescribed medication. [REDACTED] indicates that he also prescribed medication for the petitioner and that on the petitioner's visit of March 17, 2011, he showed minimal improvement. The record also includes a January 27, 2011 letter signed by [REDACTED] who notes that the petitioner was seen for hypertension, insomnia, anxiety, and depression on March 10, 2010 and on January 27, 2011 and was prescribed medication, and that the petitioner had consulted with [REDACTED] a psychiatrist, and was under his care until June 30, 2010 for depression.

Upon review of the record, the petitioner has not provided consistent detailed testimony that he was subjected to battery perpetrated by M-G-. The AAO acknowledges the petitioner's statement and the statements signed by his friends. Although these statements reference the petitioner being kicked, having his turban pulled, and being hit, neither the petitioner nor the individuals who offered testimony on his behalf describes the surrounding circumstances or details regarding these allegations. The petitioner does not provide a consistent chronological timeline of these events as three of the incidents allegedly occurred subsequent to M-G- leaving the petitioner forever. The petitioner does not describe any of the interactions of the couple leading up to, during, or after the alleged incidences of battery. Thus, the record lacks probative information regarding specific incidents of battery perpetrated by M-G-. The petitioner does not address the inconsistencies which were pointed out by the director in the denial decision and fails to discuss or provide any further detail regarding any incident of battery.

Similarly, the petitioner does not provide any descriptive detail regarding instances of extreme cruelty perpetrated by M-G-. The petitioner and the individuals who signed statements on his behalf, although referencing M-G- calling the petitioner names and becoming abusive, do not elaborate on any specific incident that they generally describe. The petitioner's indication that M-G- started abusing him in front of her son and boyfriend and that she demanded money and humiliated him is lacking in the probative details that would establish that M-G-'s conduct was controlling or manipulative or had actually occurred. The petitioner has not provided probative evidence that he was subjected to verbal or mental abuse or that any of M-G-'s conduct constituted extreme cruelty as defined in the statute and regulation.

Upon review of the letters submitted by the petitioner's doctors, the doctors do not causally connect any specific incident of battery or extreme cruelty as those terms are defined in the statute and regulation to the petitioner's mental health condition. [REDACTED] March 16, 2011 letter submitted on appeal appears to conflict with the petitioner's statement that the deterioration of his marriage did not begin until 2006, two years after the date of the marriage, and that his union with M-G- lasted from 2004 to 2009. Moreover, although [REDACTED] notes the petitioner's general statements regarding his marriage to M-G-, he does not find that the petitioner was subjected to domestic abuse perpetrated by M-G-. The letters signed by [REDACTED] and the prescription written by [REDACTED] do not provide substantive, probative information that the petitioner was subjected to actual threats, controlling actions, or other abusive behavior perpetrated by M-G- that was part of a cycle of psychological or sexual violence.

As observed above, the petitioner's statements and the statements of others on his behalf lack detail and thus are insufficient to establish credibility. The petitioner has not provided credible testimony or other evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse.

Good Faith Entry Into Marriage

The Form I-360 record initially did not include any evidence regarding the petitioner's intent when entering into the marriage. In response to the director's RFE, the petitioner submitted his March 22, 2010 statement indicating that he met M-G- at McDonalds in the Bronx and the couple started dating. The petitioner stated that the couple lived on 168th Place from the date of their marriage on June 17, 2004 until they separated in April 2009, he did not know M-G- had a son from a prior relationship, and that during the first two years of marriage, he and M-G- enjoyed living together as husband and wife. The petitioner also provided statements signed by [REDACTED] on March 24, 2010 and by [REDACTED] on September 23, 2010. [REDACTED] declared that the petitioner met M-G- at McDonalds, the petitioner introduced M-G- to him at another time, he saw M-G- and her son at the petitioner's home, he attended the couple's wedding, and the couple had a good marriage during the first two years. [REDACTED] provided the same information as [REDACTED] [REDACTED] provided the same information as [REDACTED] and added that the couple had a good marriage until M-G-'s son and boyfriend started visiting them.

Based on the information in the record, the director determined that the petitioner had provided inconsistent and general information and that the individuals who submitted statements signed on his behalf did not provide any details regarding actual observations they made of the couple's allegedly good faith marriage. The director noted that the petitioner had indicated the couple had resided together almost ten years on the Form I-360, a time during which the petitioner was married to another woman. The director also noted the inconsistencies in the petitioner's IRS Form 1040 returns, the lack of a signature date on the leases submitted, and the lack of evidence regarding joint accounts until the period leading up to and immediately preceding the petitioner's immigration interviews. The director determined that the petitioner had not established his good faith intent when entering into the marriage.

On appeal, the petitioner provides a second statement in which he adds that he met M-G- in December 2003 at a McDonalds and started dating her. He notes that he is a taxi driver and frequently helped M-G- with rides whereby a relationship developed based on common interest and the time they spent together. The petitioner submits the account transcript of his IRS Form 1040 for the 2009 tax year showing that he filed as single. The petitioner re-submits photocopies of photographs, the statements of his friends, and other documentation.

Counsel asserts that the petitioner entered into a good faith marriage and that other documentary evidence is not available because of the abusive relationship.

Upon review, the petitioner does not provide probative testimony regarding his courtship with M-G- or his interactions with M-G-. He does not describe, in any meaningful detail, the couple's first introduction; his first impressions of M-G-; their decision to date; their first date; their courtship; their decision to marry; their engagement; their wedding; or any of their shared experiences. He fails to describe the couple's mutual interests, her family, the couple's daily routines, or any probative information for the record that assists in determining his intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter, the record is devoid of any testimony from the petitioner that establishes his intent when entering into the marriage. Likewise, the statements from his three friends fail to provide any probative details regarding their observations of the petitioner's interactions with M-G- or his alleged good faith intent when entering into the marriage. Upon review, the record in this matter does not include sufficient probative, consistent evidence, even when considering the information in the aggregate, to establish that the petitioner entered into marriage with M-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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. The petition remains denied.