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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 07 2011

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:

SELF-REPRESENTED

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains 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 May 25, 2010, the director denied the petition, determining that the petitioner had not established he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse. The petitioner submits a Form I-290B, Notice of Appeal or Motion, and a statement 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 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.

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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Republic of Armenia. He entered the United States on or about July 11, 2008 as a B-2 visitor. On October 30, 2008, the petitioner married T-H¹, the claimed abusive United States citizen. On or about January 23, 2009, T-H- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On August 10, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On January 13, 2010, the director issued a request for evidence (RFE) to obtain further information regarding the Form I-360. The petitioner noted on the Form I-360 that he and T-H- resided together from October 2008 to June 2009. 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 T-H-. The petitioner submits a timely appeal.

In the petitioner's initial July 2, 2009 personal statement, the petitioner declared:

I was emotionally abused by my spouse, [T-H-], who knowing how sensitive I am; hurt me by making awful comments on my sensitivity and appearance,

¹ Name withheld to protect the individual's identity.

constantly lying to me and preventing me from socializing with other people and becoming independent. Sometimes when we were out for shopping, she made laud [sic] scandals if I wanted to buy something for myself, which she did not approve.

The petitioner declared that he gave T-H- \$5,000 to deposit in their joint account but when he checked the account, the money was not there and T-H- told him she had forgotten to put the money in their account and she no longer had the money. The petitioner stated that T-H- became possessive and when he asked for money she would find excuses not to give him the money and she would supervise what he bought when they were at the store. The petitioner indicated that T-H- called him names, made fun of his accent, humiliated him, and laughed at him. The petitioner noted that in May 2009, T-H- told him she was not a dance instructor but was an adult film actress and that she had a ten-year-old daughter. The petitioner noted his shock and the subsequent fight over this revelation. The petitioner indicated that at the June 3, 2009 interview with immigration officials regarding the Form I-130, T-H- told the immigration officer of her work and he was embarrassed. The petitioner indicated that on June 10, 2009, T-H- left him but did not take any of her belongings and that she called him a few times but only to advise him that their bank account was overdrawn. The petitioner stated his belief that if he leaves the United States he would be subject to the 3-10 year bar and would be unable to finalize his divorce from T-H-.

The petitioner provided the declaration of his aunt, [REDACTED] who declared that: the petitioner lived with her; that she saw shortly after their marriage that the couple had problems and that she witnessed a few fights between the couple; T-H- was absent from the home on a regular basis and sometimes would not come home for days or would come home late at night; she witnessed T-H- yell at the petitioner for not working; and she was aware that T-H- told the petitioner she had a child and the petitioner was devastated that T-H- would lie to him. The initial record also included the declaration of the petitioner's cousin, [REDACTED] who declared that: he witnessed a few fights between the couple; T-H- was absent from the home on a regular basis; T-H- said that she was a children's dance instructor; he witnessed that T-H- came home late; T-H- yelled at the petitioner for not working; and in May 2009 the petitioner told him that T-H- was an adult film actress and maybe a prostitute. The petitioner also provided the declaration of another cousin, [REDACTED] who declared that: the petitioner told him that T-H- would disappear for days and would come home late at night drunk; the petitioner was embarrassed by T-H-'s behavior in front of his aunt and cousin; the petitioner told him that T-H- treated him unfairly because he did not work; and the petitioner later mentioned that T-H- had a child and was in adult films. In the declaration of [REDACTED] declared that the petitioner told her that: T-H- would disappear for days and would come home late at night drunk and T-H- told the petitioner that she was in adult films and had a child that she had not told the petitioner about. The record further included a declaration signed by [REDACTED] who indicated her belief that T-H- was very jealous and noted that if the petitioner would try to help his female acquaintances T-H- would scream at him, use foul language, and throw whatever was in her hands at the moment. [REDACTED] also declared that when they were together, T-H- would pick up the petitioner's phone calls and that it turned out that T-H- was a pornographic film actress. In the declaration of [REDACTED]

██████████ stated that the petitioner told him that: the couple had fights; the petitioner thought that T-H- was trying to control him and tell him what to do, and T-H- was in the adult film business. In the declaration of ██████████ stated that the petitioner told him that the couple had fights because T-H- was trying to control the petitioner and tell him what to do and the petitioner found a DVD in his apartment of a pornographic film that featured T-H-.

The initial record also included a July 27, 2009 evaluation prepared by ██████████ a licensed clinical psychologist. ██████████ stated that the petitioner showed signs and symptoms consistent with physical and emotional abuse by his wife. ██████████ noted that: T-H- intimidated the petitioner and tried to isolate him socially; she verbally assaulted him in public by calling him offensive names and throwing small objects at him; and she lied and/or misrepresented facts to the petitioner. ██████████ indicated that the petitioner revealed that six or seven months after entering into the marriage, the petitioner accidentally found an adult film video in his apartment featuring his wife and when he confronted T-H- she told him that she had lied because she did not think he would marry her if he had known about her past. The petitioner also reported to ██████████ that T-H- promised to quit the business. ██████████ also indicated that the petitioner revealed that he was still in possession of his wife's documents but that she had told him that she did not have time to pick them up. ██████████ observed that the petitioner showed signs of anxiety and depression and recommended that the petitioner continue treatment.

In response to the director's RFE, the petitioner provided a second personal statement in which he declared that he had had submitted an amended declaration that his prior attorney had not submitted. The petitioner noted that in the amendment he had described the overdraft of his bank account in August 2009 and had described continued telephonic threats, and an incident of physical abuse by his wife's friends which occurred in October 2009. The petitioner also indicated that T-H- had given him a DVD of one of her new movies which he found disgusting. The petitioner added that he did not provide reports from police or other officials because he was afraid as his wife had threatened him stating that if he contacted the police she would deport him.

The petitioner also provided a statement signed by his aunt, ██████████ on October 23, 2009, and asserted that his prior attorney failed to submit it to United States Citizenship and Immigration Services (USCIS). ██████████ in the October 23, 2009 statement, declared that on October 21, 2009, she learned of an incident that occurred on October 20, 2009 at the petitioner's apartment. ██████████ indicated that the petitioner told her that two people claiming to be friends of T-H- came to his apartment and asked for T-H-'s documents and when he told them he had already mailed the documents to her they did not believe him and pushed him until he fell down and hit his head on the corner of a chair, after which they called T-H- who confirmed that she had received the documents. ██████████ noted that while she was staying with the petitioner, T-H- called and threatened to deport the petitioner if he reported the incident to the police. The record included photographs of the petitioner with a small bandage on the right side of his temple. The record also included a photocopy of an appointment slip with a doctor on May 27, 2010 and on March 17 of an unknown year.

The director determined that the evidence submitted was not sufficient to establish that the petitioner had been subjected to battery or extreme cruelty perpetrated by T-H-.

On appeal, the petitioner provides a third personal statement. The petitioner asserts that he has provided specific in-person accounts of abuse and/or extreme cruelty and notes specifically that his wife did not disclose that she was an adult film actress until after the marriage and that the declarants witnessed instances where his wife yelled at him. The petitioner contends that USCIS has found him prima facie eligible for this benefit. The petitioner claims that the photographs submitted are of his severe beating. The petitioner repeats elements of his initial statement, his statement in response to the director's RFE, and of the declarations submitted on his behalf, and contends that his testimony and the testimony of others demonstrates that he was subjected to torture, battery, and extreme cruelty by T-H-.

Upon review of the totality of the record, the petitioner has not established that he was subjected to battery or extreme cruelty as those elements are set out in the statute and regulation.

The petitioner has not established that he was subjected to battery. The record includes two possible references to claimed battery. In the declaration signed by [REDACTED] she indicated that T-H- would throw things because of her jealousy. [REDACTED] does not indicate that T-H- would throw things at the petitioner or that the petitioner was ever hit by any object. The petitioner does not provide any detailed probative testimony regarding the behavior of T-H- when she exhibited her jealousy. Upon review, the initial record did not include detailed information regarding any specific incidents of battery during the time period the petitioner and T-H- allegedly resided together. In response to the director's RFE, the petitioner indicated that he had submitted an amended personal statement and his aunt's statement regarding an incident that occurred subsequent to the time the couple allegedly resided together and after the Form I-360 had been filed. The petitioner referenced a physical altercation between himself and two of T-H-'s friends that occurred on October 20, 2009. The petitioner does not provide a detailed description of this incident or any probative testimony detailing the circumstances of this alleged incident in his personal statement. In the petitioner's aunt's statement, she described what the petitioner told her on October 21, 2009, the day after the incident. [REDACTED] the petitioner's aunt, indicated that the petitioner was pushed by two men demanding T-H-'s documents and that the petitioner fell as a result of being pushed and hit his head on a chair. The record included photographs of the petitioner with a small bandage on his right temple. The statements the petitioner made to [REDACTED] a day after the alleged incident do not provide the requisite detail to establish that the petitioner was subjected to battery perpetrated by T-H- or at her instigation. The record does not include sufficient information detailing the confrontation and whether the situation was a mutually combative situation. The record is simply insufficient in this regard. The record does not include the necessary probative testimony demonstrating that the petitioner was subjected to battery perpetrated by his spouse.

The petitioner has not established that he was subjected to extreme cruelty perpetrated by T-H-. The petitioner states generally that T-H- hurt him by making awful comments on his sensitivity and appearance, by calling him names, making fun of his accent, humiliating him, laughing at him, and preventing him from socializing with other people. The petitioner also declares that the couple had disagreements about money and that T-H- used the \$5,000 he asked that she put into their joint account and she overdrew their account after she left him. The petitioner further notes

his embarrassment at learning that his wife was an adult film actress and that she had a ten-year-old child from a prior relationship. The petitioner's testimony regarding the behavior of his spouse is not detailed and does not include information regarding when these incidents occurred, where the incidents occurred, or any of the specific circumstances of these incidents. The AAO acknowledges the petitioner's claim that T-H- threatened him with deportation on one occasion but again the event is not specifically described. The petitioner does not describe instances when T-H- prevented him from socializing with other people. Moreover, the declarations submitted on the petitioner's behalf show that the petitioner lived with his aunt and cousin and communicated with other people; thus his statement that he was prevented from socializing with others is in conflict with the evidence in the record. The petitioner's central complaint appears to be his embarrassment resulting from the discovery that his wife was an adult film actress and had a child from a previous relationship. However, T-H-'s choice of employment and her failure to disclose that she had a child are not acts of extreme cruelty against the petitioner as set out in the statute and regulation. The petitioner's general statements regarding his wife's actions are insufficient to demonstrate that he was the victim of any act or threatened act of physical violence or extreme cruelty, that T-H-'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 him.

Upon review of the statements submitted on the petitioner's behalf, the petitioner's aunt and cousin whom the petitioner and T-H- allegedly lived with, stated generally that they witnessed a few fights, that T-H- came home late or was absent from the home, and that T-H- yelled at the petitioner for not working. The declarants do not describe any specific incident or event of battery or extreme cruelty as defined in the statute and regulation. The statements of [REDACTED] do not include any evidence that they witnessed particular behavior on the part of T-H- but rather report what the petitioner told them of T-H-'s alleged behavior. [REDACTED] does not reveal the circumstances of T-H-'s alleged jealous behavior or of picking up the petitioner's phone calls. Upon review of the statements submitted on the petitioner's behalf, the statements are bare of the essential detail necessary to ascertain that T-H-'s behavior included actual threats, controlling actions, or other abusive behavior that was part of a cycle of psychological or sexual violence.

Upon review of the opinion of [REDACTED] does not provide examples of specific incidents or events that are causally connected to his diagnostic impression that the petitioner showed signs and symptoms consistent with physical and emotional abuse by his wife. [REDACTED] does not detail any underlying trauma or causative factors that support his conclusion. The evaluation lacks probative value in this matter as [REDACTED] does not describe specific incidents of battery or extreme cruelty as set out in the statute and regulation. Thus, the evaluation does not provide the necessary foundation establishing the causal connection between specific instances of abuse as detailed in the statute and regulation and [REDACTED] diagnostic impression.

In this matter, the petitioner's testimony fails to establish that T-H-'s actions were comparable to the types of 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. Nor has the petitioner established that T-H-'s behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

The statements submitted on the petitioner's behalf also fail to include sufficient probative information regarding specific incidents that constitute battery or extreme cruelty. Upon review of the record, the petitioner has not established that he was subjected to battery or extreme cruelty as set forth in the statute and regulation. For this reason, the petition will not be approved.

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. The petition remains denied.