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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: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

FEB 15 2011

IN RE: Petitioner: [REDACTED]

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 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 September 20, 2010, the director denied 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.

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.

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(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 Colombia. He entered the United States on or about September 14, 2000 as a B-1 visitor. On July 1, 2007, the petitioner married D-B-<sup>1</sup>, the claimed abusive United States citizen. On September 19, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that he resided with D-B- from July 2007 to January 2008. On February 23, 2010, the director issued a request for evidence (RFE). Counsel for the petitioner responded by requesting additional time to respond to the RFE. In the director's September 20, 2010 denial decision, the director noted that the RFE had indicated specifically that an extension of time would not be granted and that an extension of time had not been granted. The director found the record complete. Upon review of the record, the director denied the petition on September 20, 2010. The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by D-B-. Counsel for the petitioner timely submitted the Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

*Abuse*

In the petitioner's initial statement dated February 25, 2010, he declared that: after his marriage to D-B-, the couple moved in with D-B-'s mother; D-B-'s mother complained and was

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<sup>1</sup> Name withheld to protect the individual's identity.

possessive of D-B- and that this created problems in the marriage; D-B- and her mother planned a trip to New York together without the petitioner; when they returned home, D-B- became aggressive when she talked to him, she hid her cell phone, she changed her passwords and email address, and started siding with her mother; D-B- told him she was pregnant but confessed that he was not the father as she had an affair in New York with her ex-boyfriend; and although they talked about the situation they decided to separate. The petitioner also noted that when his wife calls all she asks for is a divorce and threatens him by saying that he will be deported.

The petitioner also submitted affidavits signed by [REDACTED] and [REDACTED] who certified that they could testify regarding D-B-'s infidelity and pregnancy by another man.

The initial record also included a September 16, 2008 psychological evaluation prepared by [REDACTED], Psy.D., P.A., which was based on an interview of unspecified length conducted on August 21, 2008. Dr. [REDACTED] noted that the petitioner had related details indicating he had been involved in an emotionally abusive relationship with his estranged spouse and that the petitioner appeared to be experiencing significant emotional distress marked by feelings of betrayal, depression, anxiety, and helplessness. Dr. [REDACTED] diagnosed the petitioner with adjustment disorder with mixed emotional features and noted that the petitioner might benefit from individual counseling and psychopharmacological intervention.

On the Form I-290B, the petitioner contends that the director erred in denying his Form I-360 as he had been abused by his wife and had to seek psychological treatment because of that abuse. Counsel for the petitioner asserts that the director misinterpreted the law by failing to apply the facts of the petitioner's case to the mental injury the petitioner suffered as a direct result of his wife's abuse. Counsel contends that the petitioner's quality of life changed as a result of his wife's abuse and that the petitioner's psychologist recommended that the petitioner might benefit from individual counseling and psychopharmacological intervention.

Upon review of the record, the petitioner does not claim and the record does not include evidence that he was subjected to battery perpetrated by his spouse. The petitioner bases his claim on his wife's infidelity, pregnancy by another man, and her abandonment. The actions of the petitioner's wife although hurtful to the petitioner are not actions that constitute extreme cruelty under the statute and regulation. Although the petitioner states his wife asked for a divorce and threatened that he would be deported, he does not provide specific detail regarding the alleged threat. He does not provide any probative testimony that D-B-'s behavior consisted of dominating tactics aimed at ensuring control over him. The petitioner fails to establish that D-B-'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 D-B-'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 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner's

change in the quality of his life is not related to actions by his wife that constitutes extreme cruelty as defined in the statute and regulation.

A review of the September 16, 2008 psychological evaluation prepared by Dr. [REDACTED] reveals that the evaluation was based on a single interview of unspecified length conducted on August 21, 2008. A single interview fails to reflect the insight and elaboration commensurate with an established relationship with a mental health professional. In addition, Dr. [REDACTED] does not causally connect his diagnosis of the petitioner's adjustment disorder to specifically described behavior that constitutes extreme cruelty under the statute and regulation. As determined above, infidelity, pregnancy outside the marriage, and abandonment do not constitute extreme cruelty as defined by the statute and regulation. Moreover, although Dr. [REDACTED] recommended that the petitioner might benefit from individual counseling and psychopharmacological intervention, the petitioner has provided no evidence that he has sought any treatment.

Upon review of the totality of the record, the petitioner has not offered probative testimony or other evidence that demonstrates he was the victim of any act or threatened act of physical violence or extreme cruelty, that D-B-'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. The petitioner's statements lack the probative detail necessary to establish that D-B- subjected him to battery or that her actions constituted extreme cruelty as defined in the statute and regulation. The record is simply insufficient in this regard. Accordingly, the petitioner has not established that he was subjected to battery or extreme cruelty.

### *Conclusion*

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.