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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

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DATE: **JUL 12 2011** Office: VERMONT SERVICE CENTER FILE:

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 battered or subjected to extreme cruelty perpetrated by his United States citizen spouse. On appeal, counsel submits a brief, two additional affidavits, and a copy of a June 21, 2010 psychological evaluation that is already included in the record.

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.

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.

Facts and Procedural History

The petitioner is a native of Zambia and a national of Malawi. He entered the United States on September 26, 2000 on a B-2 visa with authorization to remain in the United States for a temporary period not to exceed March 25, 2001. He married S-F,¹ the claimed abusive United States citizen on November 24, 2004. On December 4, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On March 25, 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 S-F-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief, two additional affidavits, and other documentation in support of the appeal.

Battery or Extreme Cruelty

¹ Name withheld to protect the individual's identity.

The petitioner initially did not provide a personal statement. He submitted a statement signed by S-F- dated December 2, 2009 in which she declared that after the couple attended an immigration interview on July 30, 2009 and she was asked to provide the results of a paternity test, she had to confess to the petitioner that she had an affair and that she was sure the baby was not his child.

In response to the director's RFE, the petitioner provided a June 14, 2010 personal statement. The petitioner indicated that the couple argued over different lifestyles and that S-F- called him names. He noted that the couple separated in 2007 but got back together after about six months. The petitioner also noted that he was very happy when he learned that S-F- was pregnant and that at the immigration interview, on July 30, 2009, S-F- said that she would get a paternity test for the baby; however, S-F- later refused. He indicated that after some weeks of argument, S-F- called him and told him that she would not do the paternity test because he was not the father of the baby. The petitioner declared that he felt devastated, angry, used, and helpless and at the end of October 2009, he moved out of their apartment and filed for divorce.

The petitioner also provided a June 21, 2010 report prepared by [REDACTED] Ph.D., licensed psychologist, based upon information [REDACTED] gathered on June 21, 2010 from his medical examination of the petitioner. [REDACTED] indicated that the petitioner reported that at first his marriage with S-F- was excellent but that gradually differences in their lifestyles began to emerge. [REDACTED] noted that the petitioner reported that S-F- liked to go out and party and he was more of a home body. [REDACTED] also noted that the petitioner reported that S-F- called him names, insulted him, and made him feel inferior. [REDACTED] further noted that during the petitioner's separation from S-F- in 2007 his use of alcohol increased and he was arrested for driving under the influence and that after S-F- told the petitioner that he was not the father of her baby in 2009 he was devastated and began to drink more heavily. [REDACTED] summarized that the petitioner experienced symptoms of depression following his wife's infidelity, belligerent treatment, and subsequent marital separation. [REDACTED] noted that he encouraged the petitioner to seek psychiatric care and antidepressant medication and offered him the option of treatment at his office.

Based on the information in the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty as defined in the statute and regulation.

On appeal, counsel asserts that the petitioner's claim does not arise from physical violence but involved a pattern of severe emotional abuse which included insults, manipulation, humiliation, and threats to take away the child all aimed at controlling, dominating, and securing compliant behavior from the petitioner. Counsel contends that the petitioner's statement in response to the director's RFE, his statement on appeal, the statement of his friend, and [REDACTED] evaluation, using the any credible evidence standard, show that the petitioner was subjected to extreme cruelty.

In the petitioner's December 9, 2010 statement submitted on appeal, the petitioner indicates the couple argued, S-F- took calls from men late at night, and when he complained she yelled and screamed at him and called him names. The petitioner adds that in 2007 he was kicked out of the

house and S-F- undertook similar actions over the next year about once a month. The petitioner changes his previous testimony by indicating that it was in May 2009 not August 2009, that S-F- told him that the baby might not be his child. The petitioner declares that S-F- continued to sometimes say that the baby was not his and then apologize and indicate that the baby was his child. The petitioner adds that when S-F- gets annoyed she becomes violent and verbally abusive. The petitioner notes that after the baby was born on August 12, 2009, he went to the hospital to sign the birth certificate but S-F- told him that he was not the father and he was hurt and devastated. The petitioner notes that on November 1, 2009, he filed for divorce.

The record on appeal also includes a December 9, 2009 affidavit signed by [REDACTED] who declares that the petitioner told him on several occasions in 2009 about his marital problems and that on one occasion the petitioner stayed with him for three days after the petitioner argued with S-F- about the paternity of the child.

The petitioner also provided two letters sent to S-F- in February and November 2010 regarding the paternity test and divorce.

Preliminarily, the AAO acknowledges counsel's reference to the "any credible evidence" standard to be used when adjudicating Form I-360 petitions. Section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(ii),(iv), and (vii). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

The petitioner does not claim and the record does not reflect that the petitioner was the victim of battery perpetrated by S-F-. Rather, his claim is based on extreme cruelty allegedly perpetrated by S-F-. Upon review of the record, the petitioner does not provide consistent statements describing specific incidents or events of extreme cruelty as defined in the statute and regulation. The petitioner does not provide a detailed account of conduct or behavior that demonstrates S-F-'s alleged name calling or infidelity amounted to extreme cruelty. He fails to describe acts of violence or other behavior that is or could be considered a part of an overall pattern of

violence. The affidavit submitted on his behalf also fails to include descriptive testimony detailing specific incidents of extreme cruelty perpetrated against the petitioner by S-F-.

The petitioner has provided general descriptions of arguments and inconsistent information regarding his discovery that he might not be the father of S-F-'s child. The petitioner provides no probative information in the record that establishes S-F-'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 does the petitioner establish that S-F-'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)). Name calling, arguing over lifestyle differences, and infidelity as the petitioner describes, are not acts of extreme cruelty as defined in the statute and regulation.

Upon review of [REDACTED] evaluation, we observe that [REDACTED] met with the petitioner on one occasion of an unspecified duration. Although he opines that the petitioner experienced symptoms of depression following his wife's infidelity, belligerent treatment, and marital separation, he does not provide any examples of extreme cruelty as that term is defined in the statute and regulation that are connected to the petitioner's symptoms of depression. Moreover, [REDACTED] does not provide evidence of his professional training and experience; his evaluation, based on one interview, does not include the insight acquired with an established relationship between a patient and mental health professional, which further diminishes the probative value of the evaluation.

Based upon a review of the totality of the evidence in the record, the petitioner has not established that he was subjected to battery or conduct that constitutes extreme cruelty perpetrated by his spouse. Counsel's assertion that the petitioner provided testimony of S-F-'s conduct, which involved a pattern of severe emotional abuse, including insults, manipulation, and humiliation in an effort to control the petitioner, is unpersuasive. The petitioner's testimony and the testimony of others on his behalf do not provide a credible detailed account of specific incidents or events that constitute battery or extreme cruelty as defined in the statute and regulation.

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.