

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **SEP 23 2010**
EAC 10 005 50198

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 \$585. 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 will be 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 a United States citizen.

On March 3, 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; and that he is a person of good moral character.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief on 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, 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 further 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ecuador. He entered the United States in or about December 1995 without inspection. On March 20, 2001, the petitioner married D-R-¹, the claimed abusive United States citizen spouse. On May 7, 2001, D-R- filed the first of several Forms I-130, Petition for Alien Relative, on the petitioner's behalf. Each of the Forms I-130 has been denied, the latest on September 23, 2009. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on October 5, 2009. The record includes the petitioner's claim that he resided with D-R- from April 2001 to November 2009.

Abuse

The petitioner initially did not submit any evidence describing the battery or extreme cruelty to which he had been subjected. In response to the director's October 15, 2009 request for further evidence (RFE) the petitioner submitted a January 5, 2010 personal statement. The petitioner declared: that "during the past four years for some reason everything went down;" that D-R- would stay out late or not come home because she was too intoxicated to drive; that for the last two years he was unable to bring friends over; that every time he brought friends or family over, D-R- would start arguing with him and embarrassing him in front of his company; that she would lock herself in her bedroom; that she started physically abusing him; that when they argue, D-R- grabs anything and starts throwing it at him; and that he started getting complaints from neighbors telling him they are

¹ Name withheld to protect the individual's identity.

unable to sleep because of the couple's constant arguments and fights. The petitioner noted that he has experienced a lot of stress and loss of sleep and cannot concentrate at his job, that he "had to be hospitalized and even had to go to a psychiatrist due to [D-R-'s] loss of respect, physically [sic] and mentally [sic] abuse."

The petitioner also provided a number of affidavits submitted on his behalf. In the January 4, 2010 affidavit of [REDACTED] declared: that D-R- and the petitioner do not look happy anymore; that D-R- tries to tell the petitioner what to do; that she sometimes locks herself in her room and does not participate in their conversations like she used to; and that she does not come to his house to visit like she used to do. In the January 4, 2010 affidavit of [REDACTED] provided the exact same statement as [REDACTED]. In the December 30, 2009 affidavit of [REDACTED] declared: that about three years ago the petitioner told him how his marriage had changed; that the petitioner told him how D-R- humiliated him and wanted everything for herself; and that when he visits them he sees "it" with his own eyes. In the December 21, 2009 affidavit of [REDACTED] declared: "I certify that things with this marriage [the marriage of the petitioner and D-R-] is [sic] not going very well;" and that she visits them regularly and based on her own personal knowledge, the couple does not have a good relationship. In the December 22, 2009 affidavit of [REDACTED] similarly declared: that D-R- and the petitioner's "marriage and relationship has gone down about 3 years ago." Likewise, in [REDACTED] affidavit dated December 21, 2009, she declared: that D-R- and the petitioner's "marriage and relationship has gone down about 3 years ago."

In the December 22, 2009 affidavit of [REDACTED] declared that the last couple of years she noticed changes going on in the petitioner's apartment and that she hears a lot of fights and how she [D-R-] humiliates the petitioner in the building. In the December 22, 2009 affidavit of [REDACTED] similarly declared: that the last couple of years she noticed changes going on in the petitioner's apartment, "for example screamin, [sic] fighting, etc." In the affidavit of [REDACTED] dated December 22, 2009, [REDACTED] noted that D-R- was a good person but lately he dislikes her because he can see how the petitioner is suffering in his marriage. In the affidavit of [REDACTED] dated January 4, 2010, [REDACTED] declared that lately he noticed that the petitioner was more stressed out with marriage problems and his opinion is that the marriage did not work out. In the December 18, 2009 affidavit of [REDACTED] declared that she had noticed that D-R- did not respect the petitioner in front of his friends and family.

The affidavits of [REDACTED] do not reference any difficulties in the petitioner's marriage but declare generally that he is hardworking and a good man.

The record in response to the director's RFE also included a December 24, 2009 evaluation prepared by [REDACTED] and clinical psychologist. [REDACTED] noted that he had seen the petitioner on December 4, 2009 for approximately four hours and that during the interview the petitioner reported that during the fifth year of his marriage to D-R- (March 2006) problems ensued. [REDACTED] noted that the petitioner indicated: that D-R- would go out often and expect him to take care of her

children; that she increased her alcohol and nicotine consumption; that she was unable to hold a job because of her conflicts with clients, co-workers, and employers; that she called the petitioner derogatory names in public while slapping his face; that she prohibited family and friends from visiting him at their apartment and the petitioner from leaving the house other than for work; and that when he did leave the house or spent time with friends after work she called him incessantly on his cell phone and accused him of infidelity. ██████ noted further that according to the petitioner: D-R- engaged in similar behaviors in front of his employer, embarrassing him at his place of work; that D-R- disdained his cooking and would throw coffee or a plate of food at his face; and that D-R-'s physical abuse included chronically slapping him or throwing coffee cups and dinner dishes at him as well as drinking glasses, shoes, flower vases, lamps, cooking pots and cooking utensils and on more than one occasion went after him with a stick or a bat. ██████ related the petitioner's statements that D-R- kept his paycheck and questioned his employer about his paycheck and eventually D-R- abdicated all her responsibilities at home to the petitioner. ██████ further reported that the petitioner stated that D-R- changed the lock to the apartment and refused to give the petitioner a set of keys and that the petitioner struggled without having his own set of keys the last two years of the relationship. ██████ reported that the petitioner indicated that he tolerated his wife's behavior because he loved her and hoped she would change but that in November 2009 decided to leave her; however, she told him that she was the one going to leave.

██████ opined: "that as a result of the experiences reported, test findings and the symptom picture evident [the petitioner] has endured significant psychological harm" and that the petitioner "will suffer additional harm if his application for residency is not accepted and he is deported due to lack of spousal support." ██████ found of concern that the petitioner had been traumatized by his marital experience and that if he were deported his depression and despair, as well as the symptoms of post traumatic stress would likely increase in severity. ██████ diagnosed the petitioner with post traumatic stress disorder, major depressive disorder, moderate physical abuse of a spouse and noted his psychosocial stressors included fear that request for residency would be denied, fear of deportation, spousal abuse, and spousal betrayal.

The director determined that the petitioner had not provided a detailed statement regarding the claimed abuse and that the affidavits likewise did not provide detailed information regarding specific incidents of abuse. The director further noted that the petitioner sought counseling only after receiving the director's RFE and found that the fact that he did not seek counseling until after presented with the RFE diminished the weight of ██████ evaluation. The director also found that the petitioner's failure to provide similar details in his personal statement as those he provided to ██████ further undermined his credibility. The director concluded that the evidence was insufficient to establish eligibility for this benefit.

On appeal, counsel for the petitioner submits a brief. Counsel asserts that the affidavits submitted on the petitioner's behalf are detailed and corroborate the petitioner's statement. Counsel also asserts that the director failed to give proper weight to the psychological report provided. Counsel contends that the director erred when finding that the petitioner had not met his burden of proof in establishing that he had been subjected to battery and extreme cruelty.

Upon review of the record, the AAO concurs with the director's determination on this issue. Neither the petitioner's affidavit nor the affidavits of his friends submitted in response to the director's RFE provides the detailed, consistent, and probative evidence that establishes eligibility for this benefit. The petitioner has provided general testimony that in and of itself is insufficient to establish credibility and is sufficiently vague as to not lend itself to an evaluation regarding credibility.

The AAO observes that in the petitioner's January 5, 2010 statement he declared that "during the past four years for some reason everything went down" prior to generally describing the volatility of his marital relationship. The AAO concludes, thus, that sometime in 2006, the petitioner is claiming that he suffered at the hands of the United States citizen spouse. *This timing is at odds with the petitioner's August 28, 2008 affidavit, submitted to U.S. Citizenship and Immigration Services (USCIS) wherein he fails to reference any form of marital difficulties or otherwise inform USCIS of the claimed volatility of his relationship with D-R-. It is the lack of detail in both the petitioner's affidavit and the affidavits submitted on his behalf that fail to provide a credible probative picture of the petitioner's marital circumstances.*

In the December 2009 affidavits of [REDACTED] the affiants fail to provide detailed information regarding their knowledge of the chronological time of the claimed abuse. The affiants do not indicate specifically when any of the claimed abuse occurred and moreover, do not report that they witnessed D-R- abusing the petitioner. For example, neither [REDACTED] declares that they witnessed D-R- abusing the petitioner. [REDACTED] declared that she heard screaming and fighting but she does not indicate that D-R- was the instigator. Likewise, [REDACTED] declared that she heard lots of fights but does not identify that D-R- was the instigator. [REDACTED] indication that D-R- humiliated the petitioner in the building is not only vague but she also does not provide any information that would allow the AAO to conclude that the "humiliation" constituted extreme cruelty of the petitioner. The [REDACTED] declaration that D-R- was bossy and that she sometimes locked herself in her room and was not as friendly or outgoing as she had been suffers from the same deficiencies as the [REDACTED] affidavits. That is, the [REDACTED] fail to provide a timeline for these incidents and moreover do not describe incidents or events that could be considered battery or extreme cruelty under the statute or regulation. [REDACTED] noted that the petitioner had told him how his marriage had changed and how D-R- had humiliated him, and that he had seen "it" with his own eyes; however, [REDACTED] does not describe "it"; thus, it cannot be determined that [REDACTED] witnessed acts that constitute abuse under the statute or regulation. [REDACTED] statements that the petitioner's marriage was not going well and had gone down about three years ago do not provide any information from which to construe that the petitioner was being abused by D-R- as set out in the statute and regulation. [REDACTED] statement that the petitioner was suffering in his marriage does not assist in establishing that D-R- abused the petitioner. Similarly the affidavits of [REDACTED] fail to provide any evidence that D-R- abused the petitioner. The AAO observes as well that several of the affidavits submitted indicate that the petitioner had worked for the affiant, yet they fail to describe incidents wherein D-R- harassed the petitioner while at work or communicated with them as employers. The petitioner's testimony and

the testimony submitted on his behalf in response to the director's RFE fail to detail specific instances of abuse that could be considered battery or extreme cruelty.

Upon review of the petitioner's statements to [REDACTED], the AAO agrees with the director's concern that the petitioner failed to provide this information in detail to USCIS in his affidavit. Moreover, the AAO observes that the petitioner in his statements to [REDACTED] does not provide a timeline of any of the alleged incidents of claimed battery, does not describe the circumstances of these events in detail, and does not indicate if any of the claimed incidents resulted in injury. The AAO observes that [REDACTED] findings were based upon a single interview with the petitioner and, as such, they fail to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering his findings speculative and diminishing the value of his evaluation. Moreover, listing a number of behaviors, without detail surrounding the interactions, is insufficient to establish that the behaviors constitute battery or extreme cruelty. Nevertheless, the AAO accepts that [REDACTED] report is based not simply on the petitioner's statements, but on clinical observations of the petitioner's behavior and affect during the evaluation. The AAO finds, however, that [REDACTED] report does not provide examples of the causal relationship of specific abuse that is consistently detailed to his diagnosis of the petitioner's post traumatic stress disorder, major depressive disorder, moderate physical abuse of a spouse. The AAO further finds that [REDACTED] has not detailed the underlying trauma or causative factors that support a finding that the petitioner presented with symptoms of an abused spouse.

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. The petitioner has submitted general information that lacks the probative detail necessary to establish this essential element. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO declines to accept generic information to establish eligibility for this benefit. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." The petitioner has failed in this matter to establish that D-R-'s actions rose 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. The claims made by the petitioner and the general statements submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that D-R-'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. The record is simply insufficient in this regard.

When evaluating the record as a whole, the AAO finds the record lacks information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The record includes generic information and lacks detailed instances of the claimed abuse. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the

petitioner must provide credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter, he has failed to do so. The petitioner in this matter has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by his former spouse.

Good Moral Character

The record includes a name check conducted by the City of Jersey City, Department of Police, dated December 14, 2009 which revealed no criminal record in the Jersey City Police Bureau of Criminal Identification Files. The director found that this local police clearance was insufficient as it did not reflect that the clearance was provided after a search of records for all of the petitioner's aliases.

On appeal, counsel for the petitioner asserts that the petitioner does not have an alias but that the initial listed on the clearance stands for the petitioner's middle name. Counsel misunderstands the director's concern. When conducting name checks on a name that may be considered common, the petitioner should submit a local clearance that includes the petitioner's complete name as identified on his official documents. In this matter, the petitioner has failed to provide such a clearance. The record on appeal is insufficient to overcome the director's decision that the petitioner has not supplied probative and complete evidence establishing that he is a person of good moral character.

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.