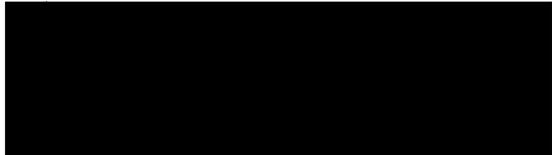


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U.S. Citizenship
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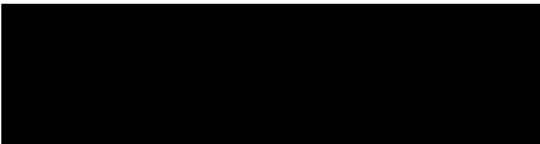
Office: VERMONT SERVICE CENTER

Date: APR 10 2007

IN RE: Petitioner: [Redacted]

PETITION: Petition for Immigrant Battered 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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 204(a)(1)(A)(iii) of 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.

The director denied the petition because the record failed to establish that the petitioner had been battered by or subjected to extreme cruelty by his spouse.

The petitioner submitted a timely 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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act further 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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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 petitioner in this case is a native and citizen of Egypt who entered the United States on November 3, 1999 as a B-2 nonimmigrant visitor. On March 9, 2002, the petitioner married A-P¹, a U.S. citizen, in Rochester, New Hampshire. On January 2, 2003, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, in the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The petitioner's marriage to his citizen spouse was dissolved on July 10, 2003, in the New Hampshire Superior Court, Strafford County² and the Forms I-130 and I-485 were subsequently denied on September 8, 2003. The petitioner was placed in removal proceedings on December 4, 2003. The petitioner filed this Form I-360 on October 1, 2004. The director issued a request for evidence (RFE) on July 11, 2005 to which the petitioner responded on August 4, 2005. The director then issued a Notice of Intent to Deny (NOID) on June 22, 2006. On July 17, 2006, the petitioner, through counsel, requested additional time in which to respond to the NOID. The request for additional time was granted and the petitioner filed a timely response. After reviewing all of the evidence, including the evidence submitted in response to the RFE and NOID, the director denied the petition, finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse.

The petitioner submitted a timely appeal on December 20, 2006. On appeal, the petitioner states generally that he disagrees with the decision of the director and requests the AAO to reconsider the evidence submitted, including the psychological evaluation that was submitted on his behalf. As will be discussed, upon review, we concur with the finding of the director that the petitioner has failed to establish that he was battered by or subjected to extreme cruelty by his spouse. The petitioner has not overcome that determination on appeal.

¹ Name withheld to protect individual's identity.

² Docket No.: [REDACTED]

To support his claim of abuse, the petitioner submitted personal statements, letters from friends, and a psychological evaluation. In his initial statement, dated September 28, 2004, the petitioner claims that a few days after they were married, his spouse began asking him for money all of the time because she wanted to go out "to party and drink" with her friends every night and that they had arguments over money almost every night. In his second statement, dated July 20, 2005, the petitioner reiterates the claims made in his initial statement regarding his spouse's requests for money and also states that his spouse would come home very late at night, would "scream and yell," and would refuse to talk to him.

The statements submitted on the petitioner's behalf contain the same general claims as those contained in the petitioner's statements. The letter from [REDACTED], a former roommate of the petitioner and his spouse, dated September 27, 2004, indicates that she heard the petitioner and his spouse "arguing and fighting" and describes the petitioner's spouse as "a very demanding person." The letter from [REDACTED], a friend of the petitioner, states that the petitioner's spouse was "not a very friendly person." The remaining letters from [REDACTED] and [REDACTED] reference "problems" in the petitioner's marriage but do not provide specific information regarding what those "problems" were.

The psychological evaluation submitted by Dr. [REDACTED] after a single session with the petitioner on July 18, 2006, states that the petitioner's spouse "would become verbally abusive" if the petitioner refused to give money to her and that she socialized frequently with her friends but refused to spend time with the petitioner. The report also indicates that there was a "recurrent pattern" in their relationship which entailed a discussion turning into a shouting match" wherein the petitioner's spouse would end up leaving and returning only when the petitioner called and pleaded with her to return. The report concludes that although the petitioner has not met the criteria for a diagnosis of Post Traumatic Stress Disorder "because the trauma of his dysfunctional marriage and divorce is not of sufficient severity even though it is complicated by the fear of deportation," the petitioner reports "symptoms consistent with . . . psychological trauma." The evaluation does not contain any specific examples of the alleged verbal abuse or instances where "psychological trauma" was inflicted by the petitioner's spouse.

On appeal, the petitioner asserts no additional claims and provides no further information regarding his spouse's behavior but states his belief that he was abused because his spouse used him for her own needs without any regard for the petitioner's own "needs, emotions and feelings."

Upon review, we do not find the petitioner's claims and those contained in the psychological evaluation and in the letters submitted on his behalf sufficient to establish that the petitioner was battered by or subjected to extreme cruelty by his spouse. The petitioner makes no claim that his spouse ever physically assaulted him or threatened him. Moreover, the claims that the petitioner and his spouse would argue, that his spouse would "yell and scream," and make demands for money are too general to support a claim of abuse and do not demonstrate that his spouse's nonviolent actions rose to level of those 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 or that they were part of an overall pattern of abuse. Accordingly, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Beyond the decision of the director, we further find that the petitioner has failed to establish that he has a qualifying relationship as the spouse of a United States citizen, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and that he is eligible for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The petitioner's marriage was legally terminated on July 10, 2003 and the Form I-360 petition was filed on October 1, 2004. As concluded by the director and affirmed in this decision, the petitioner has failed to establish that his wife battered him or subjected him to extreme cruelty during their marriage. Consequently, the petitioner has not established that the legal termination of their marriage was connected to his former wife's battering or extreme cruelty, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. As the petitioner did not have a qualifying relationship with his former wife under section 204(a)(1)(A)(iii)(II) of the Act, he has also failed to establish that he is eligible for immediate relative classification based on that relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought 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.