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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [Redacted]
EAC 06 093 50212

Office: VERMONT SERVICE CENTER

Date: APR 17 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:



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.

for
Maura Deadrick
Robert P. Wiemann, 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 petitioner seeks immigrant classification under 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 a United States citizen.

The director denied the petition because the petitioner did not establish that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a statement.

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 explicated 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 guidelines 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 record in this case provides the following facts and procedural history. The petitioner is a native and citizen of Jamaica who entered the United States on April 16, 2001 as a nonimmigrant visitor (B-2). On July 19, 2004, the petitioner married P-H-¹, a U.S. citizen, in Florida. The petitioner filed this Form I-360 on February 7, 2006. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite battery or extreme cruelty. The petitioner timely responded to the NOID with additional evidence. The director denied the petition on October 3, 2006 for lack of the requisite battery or extreme cruelty and the petitioner, through counsel, timely appealed.

On appeal, counsel claims that the testimony submitted below established that the petitioner's wife subjected him to battery and extreme cruelty. We concur with the director's determination. Counsel's statement on appeal fails to overcome the ground for denial.

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's January 18, 2006 affidavit and undated letter submitted in response to the NOID;
- Copy of a Miami-Dade, Florida Police Department report dated November 12, 2005;

¹ Name withheld to protect individual's identity.

- January 24, 2006 letter from the office manager of the petitioner's employer, [REDACTED]
- November 22, 2005 letter of the petitioner's friend, [REDACTED]
- November 22, 2005 letter of the petitioner's friend, [REDACTED]
- November 22, 2005 letter of the petitioner's friend, [REDACTED]
- November 22, 2005 letter of the petitioner's friend, [REDACTED]
- July 13, 2006 letter of the petitioner's sister, [REDACTED]

In his January 18, 2006 affidavit, the petitioner states that in September 2004 at a family gathering at his sister's house, his wife began arguing with him, accused him of sleeping with his cousins and threw juice at him. The petitioner states that his wife took his keys and locked him out of the house, called him derogatory names, and caused problems at his work, which made him lose two jobs. The petitioner states that his wife would also search his cellular telephone for numbers that he had called and would then call and verbally abuse those individuals. By January 2005, the petitioner states that his wife would hit him, destroy his clothing, damage his car and throw things at him in front of her daughters and other people.

On Saturday, November 12, 2005, the petitioner states that he and his wife got into an argument when he was lying on the floor because his back hurt. The petitioner states that his wife squeezed his neck, scratched him, tore his clothes and then threw all of his clothes into the yard. The petitioner reports that he called the police and states:

When the police I [sic] came the scratches from my neck were bleeding. They took her to the car and asked me if I wanted to press charges. They said that if I filed charges and since there were injuries they were going to take her. I did not file any charges against her because of her daughter because she came and asked me please do not do anything against her.

The petitioner states that the following Monday, November 14, 2005, he went by himself to the former couple's scheduled immigration interview and the officer told him that his former wife had withdrawn her petition for him. The petitioner states that after this incident he moved to his sister's house where his wife came to curse at and argue with him. After a while, the petitioner states that he reconciled with his wife, but that after two weeks "she went back to her ways of hurting [him] back physically and emotionally and being disrespectful" of him and his family. The petitioner reports that he has lost confidence and "[h]er constant threatens [sic] and emotional instability has kept [him] back, down and depressed."

In his undated letter, the petitioner states that on November 14, 2005, he showed the immigration officer the cuts on his neck, but the officer said he would have to speak to the police about the incident and told him to withdraw his adjustment application. The petitioner reports that three days later he returned to his wife's house to get the rest of his belongings and they were gone. The petitioner also states, "Whenever we have anything like some disagreement she will say is [sic] going to [expletive] me up. Because she know [sic] my status."

Ms. [REDACTED] states that the petitioner received numerous calls from his wife on his cellular telephone during his training, that his wife then made incessant calls to the office demanding to speak with the petitioner and falsely claiming there was an emergency, and that on November 15, 2005, the petitioner came to work with bruises and scratches on his head, face and neck, which the petitioner said were caused by his wife's physical abuse. Ms. [REDACTED] states that the petitioner's wife then incessantly called members of the administrative staff and left accusatory and derogatory messages and that her actions ceased only when she was told of the potential legal ramifications of her behavior. Ms. [REDACTED] states that on November 11, 2005, the petitioner called her in the middle of the night crying and said that his wife had cut him with her fingernails, he was bleeding and wanted to go to the emergency room.

Other evidence in the record contradicts the statements of the petitioner, Ms. [REDACTED] and Ms. [REDACTED] regarding the events that occurred on November 12 and 14, 2005. The police report states that the reporting officer met with the former couple "who advised that they engaged in a verbal argument over relationship problems. [Their] situation had calmed down upon arrival. No signs of physical injuries. [The petitioner] agreed to leave for the rest of the night." In addition, Citizenship and Immigration Services (CIS) records from the petitioner's November 14, 2005 interview do not indicate that the petitioner informed the interviewing officer about his alleged injuries from the November 12, 2005 incident or any other incidents of his wife's alleged abuse. Although advised of these discrepancies in the NOID, the petitioner discussed his immigration interview on November 14, 2005, but did not explain why the police report states that he was not injured. The petitioner provides no explanation or evidence to resolve this discrepancy on appeal.

The statements of three of the petitioner's friends and his sister indicate that the petitioner had marital problems, but they do not provide probative details sufficient to support his claim. Ms. [REDACTED] states that the petitioner told her that his wife did not respect him and disgraced him in front of her children. Ms. [REDACTED] reports that after his marriage, the petitioner became secluded, withdrawn and was under stress. Ms. [REDACTED] states that the petitioner's wife was vindictive, ordered him around, treated him like a child and made the petitioner "so stress out [sic]." Mr. [REDACTED] states that the petitioner stayed with him for two or three nights on some, unspecified occasions when the petitioner's wife threw him out. Mr. [REDACTED] states that he overheard the former couple arguing and that sometimes the petitioner was scared to return home. Ms. [REDACTED] states that the petitioner's wife wanted to control him and tried to prevent him from seeing his friends and family. Ms. [REDACTED] reports that the petitioner's wife accused him of having intimate relations with his relatives and her daughter and that his wife caused him to lose employment. Ms. [REDACTED], Ms. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] do not describe in detail any incidents of abuse that they witnessed and they do not provide probative accounts of their observation of the effects of the alleged abuse on the petitioner. Accordingly, their testimony is of little probative value.

The petitioner's account of one significant incident of alleged abuse is contradicted by the corresponding police report and the petitioner provides no explanation or evidence to resolve this

discrepancy, which detracts from the probative value of his testimony. The affidavits of the petitioner's employer, friends and sister indicate that the petitioner had marital difficulties and that his wife caused serious problems for him at work. However, their testimony fails to demonstrate that the petitioner's wife battered or subjected him to battery or extreme cruelty.

The petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.