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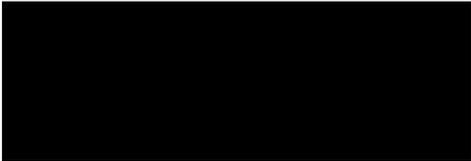
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]
EAC 06 018 51433

Office: VERMONT SERVICE CENTER

Date: APR 23 2007

IN RE:

Petitioner: [Redacted]

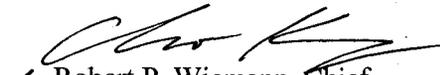
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 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 classification an immigrant 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 a United States citizen.

The director denied the petition because the petitioner did not establish that he had been battered or subjected to extreme cruelty by his spouse.

The petitioner, through counsel, submits a timely appeal and brief with copies of documents previously submitted.

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 . . . 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 standard and 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 pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who indicates on the Form I-360 that he entered the United States in September 1995 without inspection. On February 16, 2002, the petitioner married E-G-¹, a U.S. citizen, in Florida. The petitioner filed the instant Form I-360 on October 18, 2005.²

As it relates to his claim of abuse, with the initial filing the petitioner submitted a personal statement, an affidavit from E-G-, and a report from a licensed psychologist. On February 14, 2006, the director issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded on April 4, 2006. At that time, the petitioner submitted a second personal statement, affidavits from the petitioner's employer, [REDACTED], and Parochial Vicar, F [REDACTED], and a second copy of the psychological report submitted with the initial filing. On April 24, 2006, the director issued a Notice of Intent to Deny (NOID) to the petitioner indicating the petitioner's failure to establish the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded to the NOID on June 22, 2006 by submitting a third statement from the petitioner and resubmitting a third copy of the psychological report. On August 23, 2006, the director denied the petition finding that the petitioner failed to establish that he had been battered by his spouse and/or that he was subjected to extreme cruelty by his spouse.

On appeal, counsel claims that the evidence established the petitioner's eligibility and that the director "disregarded" certain evidence. As will be discussed, counsel's contentions do not overcome the ground for denial and the appeal will be dismissed.

As there appears to be no dispute that the petitioner was not battered or physically abused, our discussion

¹ Name withheld to protect individual's identity.

² Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, filed on the petitioner's behalf by E-G- on October 17, 2002 and a Form I-485, Application to Adjust Status, filed by the petitioner on January 28, 2005. The Form I-130 was approved on January 4, 2005.

focuses only on the issue of the petitioner's claim of extreme cruelty. In his initial statement, the petitioner indicated that in August 5, 2005, E-G- began to treat him "in a cruel and demeaning manner" and resumed a sexual relationship with her previous boyfriend. Additionally, the petitioner claimed that his wife used his unlawful status "as a means to control" him. The petitioner's second and third statements contain essentially the same claims as his first statement but provide further examples of "degrading" statements made about the petitioner and descriptions regarding E-G-'s alleged affair. The petitioner also elaborated on the claim regarding being threatened because of his immigration status and stated that E-G- "threatened to withdraw the petition for alien relative" if the petitioner attempted to interfere with E-G-'s contact with her ex-boyfriend.

The psychological report provided by Dr. [REDACTED] after a single interview with the petitioner on September 25, 2005 describes how E-G-'s behavior began to change when she attended a seminar. Dr. [REDACTED] indicates that E-G- did not call the petitioner and that the petitioner could not contact E-G- on the telephone. The report states that the petitioner became suspicious when he realized that E-G- had begun drinking. Dr. [REDACTED] concludes her report, finding that the petitioner suffers from "Major Depressive Disorder" because he was "soundly rejected and abandoned by" E-G- and because she was "cruel with him by not being truthful with him from the beginning, by having an affair with another man, and finally by abandoning him." While the report generally states that the petitioner was "verbally abused" during his "highly volatile marriage," Dr. [REDACTED] does not describe any of the alleged verbal abuse or "volatility" in the marriage.

The affidavit from [REDACTED] indicates that E-G- did not treat the petitioner "with the same respect, love, and care with which [the petitioner] treated her" and that she would make degrading and demeaning comments about the petitioner's job. We note that Mr. [REDACTED] fails to indicate any claim regarding the petitioner being threatened by E-G- over his immigration status.

The affidavit from Father [REDACTED] states, "the decision taken by his wife to abandon him has greatly affected [his] psychological, emotional and affective life." Other than the claim that the E-G- abandoned the petitioner, Father [REDACTED] does not describe any of E-G-'s behavior or treatment of the petitioner.

Upon review, we do not find the testimonial evidence contained in the record sufficiently establishes that the petitioner was subjected to extreme cruelty by E-G-. While we do not dispute the claims of the petitioner or the findings of the psychological assessment that the petitioner suffers from depression due to what occurred during his marriage, the record does not establish that what the petitioner claims to have suffered during his marriage can be considered extreme cruelty. Although the petitioner's depression may be a direct result of his spouse's actions, not any claimed action will suffice to establish the petitioner's claim of abuse. The claims that the petitioner's spouse called the petitioner names, made degrading comments to him and about his job, had an affair, and ultimately abandoned the petitioner do not rise 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 remaining claim that the petitioner was threatened by E-G- because of his immigration status does not carry sufficient weight to establish his claim of extreme cruelty and was not noted in the affidavits submitted by Mr. [REDACTED] and [REDACTED].

Accordingly, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty by his spouse 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.