

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9

[REDACTED]

FILE: [REDACTED]
EAC 06 017 52966

Office: VERMONT SERVICE CENTER

Date: JUN 20 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:

SELF-REPRESENTED

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
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, the petitioner submits a letter and copies of documents previously submitted below.

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 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 the Dominican Republic who states in these proceedings that he entered the United States on December 3, 1996. On October 11, 1997, the petitioner married G-F¹, a U.S. citizen, in New York. The petitioner filed this Form I-360 on October 14, 2005.² The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence. The director later 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 August 10, 2006 for lack of battery of extreme cruelty and the petitioner timely appealed.

On appeal, the petitioner claims that he wife abused him for years, he received "special mental and physiologist [sic] treatment" and that his depression affected his own life and the lives of his children. We concur with the director's determination. The petitioner's assertions on appeal fail to overcome the ground for denial.

Battery or Extreme Cruelty

¹ Name withheld to protect individual's identity.

² In his decision, the director mistakenly referenced the date of filing as October 4, 2005.

The record contains the following evidence relevant to the petitioner's claim that his wife subjected him or any of his purported children to battery or extreme cruelty during their marriage:

- The petitioner's October 6, 2005 letter, his undated statement submitted in response to the RFE, the petitioner's June 11, 2006 letter and his August 18, 2006 letter submitted on appeal;
- A copy of the petitioner's Family Offense Petition filed against his wife in the Family Court of New York, Bronx County on September 6, 2005; the corresponding Temporary Order of Protection issued *ex parte* by the court on that same date and effective through November 9, 2005; and a summons issued to the petitioner's wife to appear in court on November 9, 2005 to answer the petition;
- Extension of the petitioner's Temporary Order of Protection issued *ex parte* on January 5, 2006 and effective until March 8, 2006 and a corresponding summons issued to the petitioner's wife to appear in court on March 8, 2006;
- Extension of the petitioner's Temporary Order of Protection issued *ex parte* on March 8, 2006 and effective until May 12, 2006 and a corresponding summons issued to the petitioner's wife to appear in court on May 12, 2006;
- Affidavit of the petitioner's friend, [REDACTED]
- Affidavit of the petitioner's friend, [REDACTED]
- Letter of the petitioner's manager, [REDACTED]
- Letter of the petitioner's landlord, [REDACTED]
- Letter of the petitioner's friend, [REDACTED]
- The January 20 and May 31, 2006 letters from [REDACTED] Case Manager at Safe Horizon; and
- A pharmacy's information sheet regarding the drug citalopram.

In his October 6, 2005 letter, the petitioner states that his wife would go out drinking, come home and be aggressive, yell and try to hit him. The petitioner also reports that his wife requested money to appear at his immigration interview and that when he refused, she abandoned him and took all of their immigration documents. The petitioner states that he requested an order of protection because his "life was in danger," but he provides no further details.

In his undated statement, the petitioner states that after their marriage, his wife demanded that he give her his entire paycheck, opened his mail without his consent and would listen in on his telephone conversations. The petitioner explains that when his wife began seeing the fathers of her children when he was not at home, he left her. The petitioner explains that the former couple later reconciled, but his wife then threatened to get him deported and once threatened to poison the food in their home. The petitioner states that his wife once said she wanted him dead and on "many occasions she took knife [sic] with bad intentions even to kill me. Sometimes the neighbors had to intervene between us to avoid some fatal action to occur." The petitioner reports that after his wife abandoned him, she would

visit him to ask for money and once brought two men with her and threatened that something bad could happen to him. After that incident, the petitioner states that he went to the police on September 1, 2005 and they told him to get an order of protection. The petitioner reports that he is receiving professional counseling and taking medication to calm his nerves and help him sleep.

In his June 11, 2006 letter, the petitioner states that he can not submit proof of any police reports because of his traumatic marriage, his belief that his life is in his wife's hands and his fear that she will call the police and get him deported. In his August 18, 2006 letter, the petitioner reiterates that he is undergoing "special mental and physiologist treatment" and states that his depression has affected his life and the lives of his four children.

The relevant documentary evidence fails to fully corroborate and support the petitioner's statements. The Temporary Order of Protection and its subsequent extensions were granted *ex parte*, indicating that the court issued the orders based solely on the petitioner's testimony because his wife did not appear in court. Although his appeal was filed on September 8, 2006, the petitioner submits no evidence regarding the outcome of the May 12, 2006 hearing on his family offense case. The petitioner states that he has received mental health care for his depression, but he submits no medical records. The informational sheet about citalopram states that the drug is used to treat depression, but the sheet does not contain the petitioner's name or any other indication that the medication was prescribed to him.

The relevant testimonial evidence also fails to establish the petitioner's claim. In her two letters, Ms. [REDACTED] of Safe Horizon, simply verifies that the petitioner completed six sessions of domestic violence counseling between October 26, 2005, after this petition was filed, and February 7, 2006. In her May 31, 2006 letter, [REDACTED] states, "At the beginning of the sessions [the petitioner] was very sad, because he thought that his situation was never ending. He stated he felt angry and frustrated." Ms. [REDACTED] provides no further, probative information.

The petitioner's friends and acquaintances also fail to provide detailed testimony sufficient to establish the petitioner's claim. [REDACTED] simply states that the petitioner was forced to go to the police station to try to get a temporary order of protection because his wife "falls into alcohol drinker [sic]." [REDACTED] states that the petitioner's wife drank heavily, was very jealous and threatened to withdraw his visa petition, which made the petitioner very nervous. [REDACTED] provides no further details and does not state the basis for his knowledge. [REDACTED] states that after the petitioner's marriage, he observed that the petitioner was troubled and the petitioner eventually confided that his wife would curse him, tried to hit him and would call the police and lie to get him arrested. Yet the petitioner himself never states that his wife called the police with false accusations against him.

[REDACTED], the petitioner's landlord, states that he received telephone calls about excessive noise and constant fighting from the petitioner's apartment when the former couple resided together, but Mr. [REDACTED] does not state that he observed any abuse and he provides no further details. [REDACTED] states that on unspecified occasions, he observed the petitioner's wife scream and curse at the petitioner and extend her hands as if to smack the petitioner. [REDACTED] simply reports that the petitioner was

forced to go to the police to try and get an order of protection because his wife was aggressive. Mr. [REDACTED] states that the petitioner's wife became very impolite and abandoned the petitioner, but he provides no probative details. Finally, [REDACTED] states that the petitioner's wife became a very aggressive person, said she would not go to the petitioner's immigration appointments and would hide his personal mail. [REDACTED] does not indicate that he actually observed these actions and he provides no further, probative information.

In his testimony, the petitioner makes several assertions that are not corroborated by the relevant, corresponding evidence. First, the petitioner states that on many occasions, his wife threatened him with a knife and his neighbors had to intervene during disputes with his wife to avoid "some fatal action," yet none of the petitioner's friends or acquaintances discuss any such incidents. Second, the petitioner does not allege that his wife ever threatened him with a knife in his Family Offense Petition. Third, the petitioner states that he received counseling and other treatment and is taking medication to calm his nerves and help him sleep. However, the petitioner submitted no medical records, no evidence of medication prescribed to him, and the letters of [REDACTED] fail to provide probative information regarding the counseling he sought and received at Safe Horizon after this petition was filed. Finally, on appeal, the petitioner claims that his depression has affected the lives of him and his four children. However, the petitioner submits no evidence that he has any children. In his testimony submitted below, the petitioner states that he and his wife lived with her two sons, but that they had no children together. On the Form I-360, the petitioner does not state that he has any children.

These deficiencies and discrepancies greatly detract from the credibility of the petitioner's testimony. The remaining, relevant evidence fails to overcome these discrepancies and establish the petitioner's claim. Accordingly, the petitioner has not demonstrated that his wife subjected him or any of his purported children 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.