

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

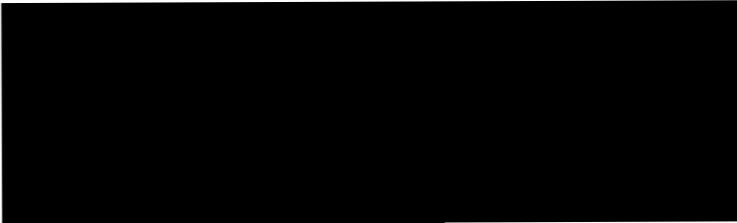
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

89



FILE:



EAC 05 148 52518

Office: VERMONT SERVICE CENTER

Date: JAN 09 2008

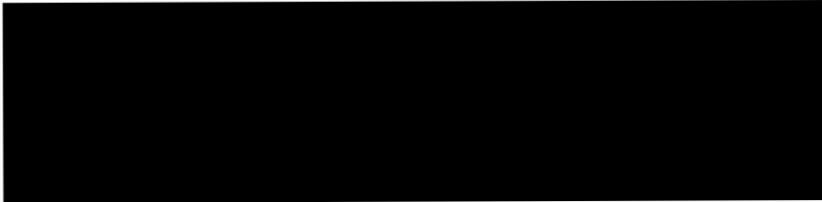
IN RE:

Petitioner:



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.


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 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.

The director denied the petition, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage.

The petitioner, through counsel, timely appealed.

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 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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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 contained 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 Trinidad and Tobago who entered the United States on March 27, 1996 as a B-2 nonimmigrant visitor. The petitioner married K-B-,* a U.S. citizen, in Taylor County, Texas on March 1, 2002. On April 19, 2002, K-B- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The petitioner's spouse withdrew the Form I-130 on September 23, 2003, the petitioner's Form I-485 was denied, and the petitioner was placed in removal proceedings.¹ The petitioner and his spouse were divorced on February 24, 2004.² The petitioner filed the instant Form I-360 on April 28, 2005. On January 5, 2006, the director issued a Request for Evidence (RFE). The petitioner timely responded. On April 3, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish battery or extreme cruelty. The petitioner failed to respond to the NOID and the director denied the petition on August 29, 2006 on the ground cited in the NOID. The petitioner, through counsel, submits a timely appeal with no additional evidence. As will be discussed, we concur with the director's determination. The petitioner has failed to overcome that determination on appeal.

To support his claim of abuse, the petitioner submitted personal statements and statements from family members and friends. In his initial statement, the petitioner describes incidents that occurred prior to his marriage, including the fact that his former spouse became pregnant by another man and had an abortion. The petitioner claims that after their marriage his former spouse "became a bit distant", "emotional" and would "close up." The petitioner states that his former spouse initially indicated that she would attend his adjustment of status interview in September 2003, but as the time neared, she "started to withdraw" and said she would not attend. The petitioner indicates that his former spouse ultimately chose to attend the interview but did not speak to him.

In his second statement the petitioner claims that he was verbally abused and that his former spouse would yell at him "all of the time." He states that although his former spouse "never physically hurt [him]," she would "get right in [his] face," was "moody" and "aggressive" and that she lied. He states that after his immigration interview, he learned that his former spouse was pregnant as a result of an extramarital affair. Additionally, the

* Name withheld to protect individual's identity.

¹ The petitioner remains in removal proceedings and is scheduled to appear before an immigration judge in Dallas, Texas on February 6, 2008.

Taylor County, Texas District Court, 326th District, No. [REDACTED]

petitioner claims that he was socially isolated and states that he would want to go out but his former wife wanted to stay home. The petitioner indicates that his former spouse was rude in front of his friends and made them uncomfortable. Further, the petitioner claims that his former spouse was possessive and “knew that she could control whether . . . [the petitioner] was able to obtain legal status.” Finally, the petitioner states that his former spouse was “terrible with money,” and that he had to walk quietly and not say anything because he feared making his former spouse angry. He claims that his former spouse “was actively attempting to cause [him] pain” and he decided he could not live like that anymore.

The letters submitted on the petitioner’s behalf reiterate the claims made by the petitioner. In her statement, the petitioner’s former spouse describes herself as depressed and moody and acknowledges that she had an affair and made “malicious[]” statements to immigration officials. The petitioner’s parents generally indicate that his former spouse would keep to herself, that she was “unpleasant to be around” and describe the petitioner’s attempt to keep his marriage together. [REDACTED], the pastor of the petitioner’s church, states that the petitioner and his former spouse “became isolated” from the church, that the petitioner was in an “uncomfortable situation,” and that the petitioner “opened up . . . and express[ed] in detail, the struggles he faced in his marriage. [REDACTED] does not, however, describe what the “struggles” were or provide any further description regarding what information the petitioner shared with him about the petitioner’s marriage. The petitioner’s friend, [REDACTED], claims that he stopped visiting the petitioner as frequently because the petitioner’s former spouse appeared to be jealous of the time he spent with the petitioner and made Mr. [REDACTED] feel uncomfortable. [REDACTED] states that the petitioner appeared to be “brow-beaten” and indicates that they “disagreed” in front of him. Similarly, the letter from [REDACTED], another friend of the petitioner, indicates that the petitioner’s former spouse seemed to “resent” their friendship, made her feel “awkward,” and accused her and the petitioner of having an affair.

As described above, we find the testimonial evidence insufficient to establish the petitioner’s claim of abuse. First, the petitioner has made no claim of battery, physical threats or violence. Second, the general statements made by the petitioner and on his behalf do not demonstrate that the petitioner’s former spouse’s actions were aimed at maintaining control over the petitioner and 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.

On appeal, counsel for the petitioner argues that the director imposed an “unreasonably high evidentiary standard” and that when considered cumulatively, the petitioner’s evidence demonstrates that he was subjected to “emotional manipulation and isolation.” Counsel states that the petitioner’s former spouse’s extramarital affair and repeated abandonment of the petitioner are examples of the extreme cruelty he was subjected to. Counsel also argues that the petitioner was abused verbally and that he was isolated from his friends and family. We are not persuaded by counsel’s arguments. As stated above, the fact that the petitioner’s former spouse “abandoned” him and had an extramarital affair does not show that the petitioner was subjected to extreme cruelty. While counsel alleges that the petitioner was subjected to verbal abuse, neither the petitioner’s statements nor any statements submitted on his behalf recounts any specific incident of verbal abuse. While the petitioner states that his former spouse would “get . . . in [his] face,” he does not describe specific behaviors of his former spouse or otherwise establish a pattern of verbal abuse. The claims of social isolation are equally unpersuasive. While the statements describe the petitioner’s former spouse as making people feel “awkward” and “uncomfortable,” the evidence does not demonstrate that the petitioner’s former spouse prevented him from maintaining relationships with his family or friends.

Finally, as it relates to the petitioner's former spouse's statement to immigration, counsel states:

The most significant act of cruelty by [the petitioner's former spouse] was her statement to the Service that the marriage was not entered into in good faith [She] abused the immigration system to ensure that his application was denied to ensure that her pregnancy was not discovered.

While we do not dispute that the petitioner's former spouse made false accusations about the petitioner, we do not find that this single incident demonstrates extreme cruelty. In her statement, the petitioner's former spouse acknowledges that she made the statement to an immigration official, but states that she was assured that her statement would not affect his status. Indeed, the agency has not ever alleged, much less made any finding that the petitioner entered into his marriage to circumvent the immigration laws. Moreover, the petitioner did not indicate that his former spouse held his status over him or that she otherwise threatened or manipulated him because of his status. While he alleges that she "knew that she could control" his status, he does not describe any incident or action other than the one discussed above. Therefore, we do not find that the petitioner's former spouse's actions were part of an overall pattern of violence against the petitioner or otherwise rose to the level of extreme cruelty. Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his former spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner has failed to overcome this finding on appeal.

Beyond the director's decision, the record also fails to demonstrate that the petitioner had a qualifying relationship with his former spouse and was eligible for immediate relative classification based on such a relationship. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act requires that a self-petitioner who has divorced his abusive spouse demonstrate that the divorce occurred within two years of the petition filing date and that there was a connection between the divorce and the former spouse's battery or extreme cruelty. While the petitioner was divorced from his former spouse within the two years preceding the filing of this petition, as discussed above, the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his spouse. As such, he is unable to demonstrate a connection between his divorce and his former spouse's alleged abuse. Accordingly, the petitioner has not demonstrated that he had a qualifying relationship with his former spouse pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. The petitioner was divorced from his former spouse before this petition was filed and he has not established that he was battered or subjected to extreme cruelty during his marriage. Consequently, the petitioner was ineligible for immediate relative classification based on his former marriage, 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). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v.*

U.S. Dept. of Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. See, e.g. Dor v. INS, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.