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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

B9



FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 26 2008

EAC 06 098 50771

IN RE:

Petitioner:



PETITION: Petition for Immigrant Abused 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.

Maura Deodrick
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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), 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 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nepal who entered the United States on April 12, 1998 as an F-1 nonimmigrant student. The petitioner married M-H-,¹ a United States citizen in Dallas, Texas on June 19, 2001.² On September 24, 2001, M-H- filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner. On the same date, the petitioner filed a corresponding Form I-485, Application to Adjust Status. On January 11, 2006, the district director denied the Form I-130 petition and the corresponding Form I-485 application because of failure to attend a scheduled interview.

The petitioner filed the instant Form I-360 petition on October 25, 2005. On March 21, 2006, the director issued a Request for Evidence (RFE). The petitioner timely responded to the RFE on April 24, 2006. On June 13, 2006, the director issued a Notice of Intent to Deny (NOID) the petition which notified the petitioner, *inter alia*, that the evidence contained in the record was insufficient to establish that he was battered or subjected to extreme cruelty by M-H- during their marriage. The petitioner timely responded to the NOID on July 10, 2006 by submitting additional evidence as well as copies of documents previously submitted. The director denied the petition on November 24, 2006, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty during his

¹ Name withheld to protect individual's identity.

² On January 6, 2006, the petitioner filed a Petition for Divorce alleging marital discord. The record does not contain evidence of the dissolution of the marriage.

marriage. The petitioner, through counsel, submits a timely appeal with no additional evidence. As will be discussed, we concur with the director's determination.

At the time of filing, the petitioner submitted an undated personal statement with no description of the alleged battery or extreme cruelty. The petitioner generally states that he had a son with his spouse, that he took care of his spouse and his son, but that his spouse left him to be with another person. In response to the director's RFE, the petitioner submitted a statement dated April 19, 2006, and statements from his friends. In his April 19, 2006 statement, the petitioner claims that his marital problems started when he asked his spouse to get a part time job to help out with their family's financial situation. The petitioner claims that after his spouse started work, he noticed that her attitude towards him changed. The petitioner claims that his spouse started lying to him, made up stories when she came home late and that one day, told him that a person at work kissed her and that she had feelings for that person. The petitioner claims that his spouse admitted to having "cheated" on him after they got married. The petitioner claims that the revelation of his spouse's infidelity made him "very upset," and that they had an argument. The petitioner claims that the day after their argument, his spouse informed him that she wanted to live with the other person and that she did not love the petitioner anymore. The petitioner claims that he begged his spouse to stay so that they could work things out and that his spouse ultimately left him and took their son with her. The petitioner claims that he was "shocked and saddened" as he saw his spouse move out of their home. The petitioner provides no further probative details regarding any alleged battery or extreme cruelty.

The statement from the petitioner's friend, [REDACTED] dated April 17, 2006, does not describe any instance of battery or extreme cruelty perpetrated against the petitioner by his spouse. Rather, he generally states that the petitioner and his spouse could not "carry on their marriage forever" Similarly, [REDACTED] states only that the petitioner looked "hopeless, stressed, [and] very sad all the time[]." Although [REDACTED] further states that the petitioner's studies were affected because of the separation from his spouse and son and references a "very difficult time," he provides no probative details which establish that the petitioner was battered or subjected to extreme cruelty by his spouse.

On appeal, counsel generally cites to the statutes and regulations related to abused spouse petitions and argues that the petitioner suffered psychological and mental distress "during their relationship break down." Counsel, however, does not provide any evidence to substantiate his claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). While the petitioner resubmits a copy of his April 19, 2006, statement, he submits no further statement or documentary evidence to support his claim of abuse on appeal.

As described above, we find the testimonial evidence insufficient to establish the petitioner's claim of abuse. First, neither the petitioner nor his friends have made any claim regarding incidents of battery, physical threats or violence. Second, the general claims made by the petitioner that his spouse lied to

him, that she had an affair, and ultimately deserted him do not demonstrate that the petitioner's spouse's actions were aimed at maintaining control over the petitioner and do not rise to the level of the acts described in the regulations 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 statements submitted on the petitioner's behalf by his friends provide no further probative details regarding the petitioner's claim of abuse.

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 spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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.