



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
EAC 05 169 52934

Office: VERMONT SERVICE CENTER

Date: MAR 04 2008

IN RE: Petitioner: [Redacted]

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:

[Redacted]

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 Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

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.

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 clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on December 8, 2005 for failure to establish the requisite battery or extreme cruelty and good moral character. In its November 22, 2006 decision on appeal, the AAO concurred with the director's determinations but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on January 17, 2007, which informed the petitioner, through counsel, that he had failed to establish the requisite battery or extreme cruelty and good moral character. The petitioner, through counsel, responded to the NOID with further evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on July 2, 2007 on the grounds cited in the NOID and certified his decision to the AAO for review.

On certification, counsel submits a letter and additional evidence. As the relevant evidence submitted below was discussed in our prior decision, incorporated here by reference, we will only address the evidence and claims submitted after that decision was issued.

Battery or Extreme Cruelty

In response to the NOID, the petitioner, through counsel, submitted a copy of the order of protection issued against him on behalf of his former wife. Counsel also submitted copies of 13 articles printed from the internet regarding domestic violence against men and an article on domestic violence from Wikipedia. On certification, the petitioner submits his July 18, 2007 affidavit, a copy of his divorce judgment and a copy of his application for documentation of the Suffolk County Police Department's response to the domestic incident between the petitioner and his former wife on March 19, 2005. None of these documents establish that the petitioner's former wife subjected him or his child to battery or extreme cruelty during their marriage.

The prior decision of the AAO and the director noted that the petitioner's former wife had filed for divorce based on his cruel and inhumane treatment. However, the April 12, 2007 judgment submitted on certification shows that the former couple's marriage was "dissolved by reason of the constructive abandonment of the [petitioner's former wife] by the [petitioner]." While the judgment shows that the family court failed to find that the petitioner had subjected his former wife to cruel and inhumane treatment, the judgment does not establish that the petitioner's former wife battered or subjected him or his child to extreme cruelty during their marriage.

The order of protection states that the petitioner was present in court at the time the order was issued. The order was issued against the petitioner for the protection of his former wife on March 22, 2005 and remained in effect until March 22, 2006. In his previous, signed statement submitted below, the petitioner asserted that his former wife's claim of his physical abuse underlying the order "was a total lie" and that she abused him. Yet the petitioner submits no evidence that he contested his former wife's claim in court, that he filed a counter-petition for his protection from his former wife, or that the court issued a mutual restraining order to the former couple. In his affidavit submitted on certification, the petitioner does not discuss the order of protection issued against him.

The articles regarding domestic violence against men indicate that both women and men may inflict abuse upon their spouses or intimate partners. Neither the director nor the AAO disputed this fact in their prior decisions. Although counsel and the petitioner claim that the director discriminated against the petitioner by determining he was not subjected to battery or extreme cruelty by his wife, we find no indication of gender bias in the director's December 8, 2005 and July 2, 2007 decisions. The director did not determine that the petitioner was not subjected to abuse because of his gender, but because the relevant evidence failed to establish that the behavior of the petitioner's wife rose to the level of battery or extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Regarding the petitioner's application for police records, we note that he has repeatedly failed to provide documentation of the March 19, 2005 incident as requested. The June 1, 2005 RFE requested the petitioner to submit copies of any police reports relevant to his claim of battery or extreme cruelty. In the January 17, 2007 NOID, the director specifically asked the petitioner to "submit a copy of the police reports related to [the] incident on March 19, 2005 for which [the petitioner's wife] was granted

a protection order.” The petitioner failed to provide any police records below. On certification, he submits a copy of his application for such records. The police department did not receive the application until July 19, 2007 and stated that it would take 120 days to supply the record. The petitioner provides no explanation as to why he did not request the records at any point in the preceding two years since he was first requested to do so. The petitioner’s application contains no documentation of the March 19, 2005 incident and is of no probative value.

On certification, counsel claims that the director did not address the psychological report of Dr. [REDACTED], which “indicates that a proper evaluation of all the material submitted in support of the I-360 Petition was not made.” The record clearly contradicts counsel’s assertion. [REDACTED]’s report was submitted on appeal and was fully addressed in our prior decision and the director’s NOID. Accordingly, in his July 2, 2007 decision, the director only addressed the evidence submitted in response to the NOID, as the prior considerations and discussions of [REDACTED]’s report were already a matter of record.

In his affidavit submitted on certification, the petitioner reiterates his claim that his former wife’s excessive spending constituted economic abuse. The petitioner states that as a result of his former wife’s demands, he had to file for bankruptcy. The petitioner submits no documentation of his bankruptcy filing or supporting evidence that his filing was caused by his former wife’s actions. The petitioner’s claim regarding his wife’s excessive spending was fully addressed in our prior decision and we do not repeat our discussion here.

The record shows that an order of protection for the petitioner’s former wife was issued against the petitioner and was in effect for a year during their marriage. The relevant evidence submitted below and on certification fails to outweigh the protection order and does not establish that the petitioner’s former wife subjected him or his child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(I)(bb) of the Act.

Good Moral Character

The director determined that the petitioner had not established his good moral character because his testimony did not outweigh the order of protection issued against him and the petitioner’s admission that he threw an object at his former wife during the underlying incident. On certification, counsel asserts that the petitioner’s action falls within the “petty offense” exception at section 212(a)(2)(A)(ii) of the Act and thus does not preclude a finding of the petitioner’s good moral character. Counsel is misguided.

Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II), provides that an alien who admits committing a crime involving moral turpitude or admits committing acts which constitute the essential elements of a crime involving moral turpitude is not inadmissible if: “[t]he maximum penalty possible for the crime of which . . . the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements [] did not exceed imprisonment for one

year[.]” Counsel submits no evidence that the petitioner’s action was not punishable by imprisonment for over one year under New York State law.

Even if the petitioner’s act fell within the petty offense exception, that provision does not bar a determination that the petitioner lacks good moral character, as a matter of discretion. The regulation at 8 C.F.R. § 204.2(c)(1)(vii) prescribes: “A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character . . . although the acts do not require an automatic finding of lack of good moral character.” The record shows that the Suffolk County, New York District Court issued an order of protection against the petitioner on behalf of his former wife, which indicates that the petitioner violated section 240.26(1) of the New York Penal Law, harassment in the second degree. The petitioner was present at the issuance of the order, which was effective for one year. The petitioner submitted no evidence that he contested the order or that the order was withdrawn or modified. In addition, the petitioner admitted, in his signed statement submitted below, that he threw an object at his former wife during the underlying dispute. Accordingly, we affirm the director’s determination that the petitioner failed to establish his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The denial of the petition will be affirmed for the reasons stated above, with each considered 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. The petitioner has not sustained that burden.

ORDER: The director’s decision of July 2, 2007 is affirmed. The petition is denied.