

PUBLIC COPY

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services



B5

FILE: [Redacted]
EAC 07 085 50811

Office: VERMONT SERVICE CENTER

Date: APR 01 2009

IN RE: [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:



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.

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

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 on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty.

The petitioner submitted a timely appeal on February 25, 2008.

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, 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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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 is a citizen of India who entered the United States as a B-2 visitor on November 16, 2001. He married P-C-,¹ a citizen of the United States, on February 14, 2006. P-C- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on August 21, 2006. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date.

The petitioner filed the instant Form I-360 on February 1, 2007. On August 17, 2007, the director issued a request for additional evidence, and requested additional evidence in order to establish eligibility. The petitioner responded on November 13, 2007, and submitted additional evidence.

After considering the evidence of record, the director denied the petition on January 23, 2008.

¹ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

The sole issue on appeal is whether the petitioner has established that he was the victim of battery and/or extreme cruelty perpetrated by P-C-. The record contains the following evidence relevant to the petitioner's claim of battery and/or extreme cruelty:

- The petitioner's January 27, 2007 self-affidavit;
- The petitioner's November 6, 2007 self-affidavit;
- Counsel's letter in support of the petition, dated January 25, 2007;
- An "Order of No Contact" issued against the petitioner by the Circuit/County Court, Fifteenth Judicial Circuit, Palm Beach County, Florida, on May 28, 2006;
- Printouts of e-mails allegedly sent to P-C- from her boyfriend;
- A psychological evaluation of the petitioner from the South Florida Medical Center, dated January 3, 2007; and
- An undated letter from P-C-'s mother to P-C-.

In his January 27, 2007 self-affidavit, the petitioner stated that he met P-C- in or around May 2005; that they began dating in August 2005; that he moved into her apartment in December 2005; and that they married on February 14, 2006. The petitioner stated that life was good, but that by March 2006, things began to change. The petitioner stated that although he worked six days per week, but that P-C- only worked five days per week, P-C- nonetheless wanted him to work every day. The petitioner also stated that P-C- began charging him for sexual intercourse in March 2006, and that she called him names when he did not pay her. The petitioner reported that, in April 2006,² P-C- began speaking to an old boyfriend and, when he checked her cell phone's call history, he learned that P-C- had been speaking to the old boyfriend every day while the petitioner was at work. The petitioner reported that, when he confronted P-C- about her relationship with her old boyfriend, she told him that she was in love with the old boyfriend, and not with the petitioner. According to the petitioner, on one occasion in May 2006 he begged P-C- to end her relationship with her old boyfriend, but she began drinking, became intoxicated, and tried to hit him with an empty wine bottle. After attempting to hit the petitioner with the empty wine bottle, P-C- told him that, although he was nice and good-looking, she was in love with someone else. Later that month, the petitioner again tried to convince P-C- to end her extramarital affair with her old boyfriend. The petitioner stated that P-C- became angry, called the police, and told them that the petitioner was "creating troubles for her." However, he reported that by the next morning P-C- "became normal" and "got me relieved." The petitioner stated that although P-C- did not pursue charges, she continually threatened to do so, and told the petitioner that if he did not obey her she would not sponsor his immigrant petition. The petitioner stated that by October 2006, P-C- started another extramarital affair, and that she spent two nights with her new boyfriend every week. The petitioner stated that he told P-C-'s mother about the situation, and that P-C-'s mother advised P-C- to be a

² The petitioner stated that this event occurred in April 2005, but the AAO presumes this was a typographical error and that the petitioner intended to state that it happened in April 2006.

good wife. However, the petitioner reports that after the discussion with her mother, P-C- was furious with the petitioner, threw her purse and coffee mug at him, called him names, and locked him out of the apartment. The petitioner reported that, a few weeks after that incident, P-C- came from work one night and told the petitioner that she had had sexual intercourse with her boss that afternoon. He also stated that, by October and November of 2006, P-C- "had become a drunkard woman," and that he was forced to call 911, "to consult" on several occasions because he feared P-C- would harm him. According to the petitioner, P-C- moved out of their shared apartment in January 2007, and bought a home with her new boyfriend. While moving her belongings out of the apartment, she called the petitioner more names. The petitioner reported that P-C-'s treatment of him caused him to develop depression.

In his November 6, 2007 self-affidavit, the petitioner stated that P-C- began "showing her colors" in October 2006; that P-C- drank and made "ugly moves toward" the petitioner; that P-C- made the petitioner bring her "food and drinks of her choice"; and that P-C- made the petitioner pay her for sexual intercourse. With regard to the incident in May 2006, when P-C- "got him jailed" while "under the influence of alcohol," the petitioner stated that P-C- had him released from jail the following morning after she had "become normal," but that this was only on the condition that the petitioner agree to obey P-C-'s commands.

In his January 25, 2007 letter in support of the petition, counsel stated that, beginning in August 2006, the petitioner "was subjected to the most horrific psychological abuse imaginable." Counsel also stated that "[i]f hell can indeed be manifested on earth, he would have been there." Counsel stated that the petitioner is suffering from "postpartum depression"; that the petitioner has a sense of endless hopelessness; and that the petitioner is numb.

The petitioner's testimony fails to establish that he was subjected to battery or extreme cruelty by P-C-. The events described by the petitioner, while indicative of a troubled marriage, are not indicative of battery or extreme cruelty as those terms are defined in the regulation. Although the petitioner states that he called 911 many times, he does not submit any 911 phone call transcripts, nor does he indicate why such transcripts are unavailable. His assertion, therefore, is not supported by any documentary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). While the actions of P-C- may have been unkind and inconsiderate, they 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 claims made by the petitioner fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, or that P-C-'s non-physical behavior was accompanied by any coercive actions or threats of harm.

Nor do the assertions of counsel establish that the petitioner was the victim of battery or extreme cruelty. First, the AAO notes that the timeline provided by counsel conflicts with the one provided by the petitioner. According to counsel, the alleged abuse began in August 2006. However, in his

first affidavit the petitioner reported that the troubles began in March 2006. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* Further, the AAO notes that, according to counsel, the petitioner is currently suffering from postpartum depression. Such an assertion undermines the credibility of counsel's assertions, as it is impossible for the petitioner to be suffering from postpartum depression.³ Counsel's assertions do not aid the petitioner's case.

Nor does the "Order of No Contact" establish that the petitioner was the victim of battery or extreme cruelty. Counsel's exhibit sheet states that this was "planned by P-C-," and the petitioner stated that P-C- called the police to initiate this action after the petitioner begged her to end one of her extramarital affairs. The record, however, does not support these assertions. The "Order of No Contact" was issued on May 28, 2006 in West Palm Beach, Florida. The document names P-C- as the "alleged victim" and states that the petitioner is to have no contact with the petitioner, and states that the petitioner may return to P-C-'s place of residence for the sole purpose of removing his personal effects and, even then, only in the presence of a uniformed law enforcement officer, and on one occasion only. The document also states that, by signing the document, the petitioner understood that he had read the document, understood the document, and agreed to obey the document; and that he understood that only a criminal division judge could modify the order, and that the alleged victim (P-C-) "DOES NOT HAVE THE AUTHORITY to modify ANY PORTION of this Order without APPROVAL BY THE JUDGE (emphasis in original)." The petitioner signed the document on May 28, 2006, and agreed to all of these conditions.

The AAO notes that the Order of No Contact stated that it was to remain in effect until the case was closed, or until further order of the court, whichever event occurred first. Although the record includes a second document indicating that the petitioner was charged with domestic battery and false imprisonment, a third document, dated June 30, 2006, indicates that the case was discharged. Accordingly, the record indicates that the Order of No Contact expired on June 30, 2006.

Although the record indicates that the Order of No Contact expired on June 30, 2006, there is no evidence to support the assertions of record that the filing of this order was an act of battery or extreme cruelty toward the *petitioner*. Rather, it indicates that P-C- and the petitioner may have been mutually combative toward one another.

³ The term "postpartum" refers to something "[o]f or taking place in the period shortly after childbirth." *Webster's II New College Dictionary* 863 (Margery S. Berube et al, eds., Houghton Mifflin 2001). Postpartum depression, therefore, refers to depression taking place in the period shortly after childbirth. As the petitioner is a male, he is incapable of giving birth and, therefore, is incapable of experiencing postpartum depression.

Nor do the e-mails that the petitioner states were sent to P-C- by her boyfriend establish that the petitioner was the victim of battery or extreme cruelty. While the AAO does not question whether extramarital affairs can cause emotional pain, they do not rise to the level of battery or extreme hardship as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Nor does the January 3, 2007 psychological evaluation from the South Florida Medical Center (SFMC) establish that the petitioner was the victim of battery or extreme cruelty. That document states the following:

[The petitioner] was evaluated on 12-27-06 and diagnosed with Depression. It is recommended that he starts [sic] psychotherapy and possible medication.

No other information was provided. The SFMC evaluation does not indicate that the source of the petitioner's depression was his treatment by P-C-. For this reason alone, this evaluation fails to establish that the petitioner was subjected to battery or extreme cruelty by P-C-. The AAO also notes that there is no indication in the record that the petitioner received any of the recommended treatment for his depression. Further, the AAO notes that the signature of the SFMC official who made the evaluation is illegible, and the individual's name was not typed. No information regarding the credentials of the evaluator to make such a diagnosis was provided. For all of these reasons, the SFMC evaluation is not useful in determining whether the petitioner was subjected to battery or extreme cruelty by P-C-.

Nor does the letter from P-C-'s mother establish that the petitioner was subjected to battery or extreme cruelty by P-C-. The letter does not indicate that P-C-'s mother witnessed any incidents of battery or extreme cruelty. Further, the petitioner's testimony indicates that any knowledge that P-C-'s mother had of the events that took place during the marriage would have been based solely on the petitioner's description of those events to her.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition. The petitioner has failed to establish that he was subjected to battery and/or extreme cruelty by P-C-.

As noted previously, while P-C-'s actions as described in the record may have been unkind and inconsiderate, they 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 claims made by the petitioner fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, or that P-C-'s non-physical behavior was accompanied by any coercive actions or threats of harm. He has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. The petitioner has failed to establish that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that his wife subjected him to battery or extreme cruelty. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

However, the record indicates that the director did not issue a notice of intent to deny the petition (NOID) before he denied the petition. Although the record clearly establishes that the petitioner is ineligible for the benefit sought, the petition must be remanded, solely on procedural grounds, so that the petitioner has the opportunity to respond to a NOID. The petition must be remanded to the director for issuance of a NOID in compliance with the regulation in effect at 8 C.F.R. § 204.2(c)(3)(ii)⁴ on the date this petition was filed, and the director must afford the petitioner the opportunity to submit a response within the 60-day period. On remand, the director need only address the issue before the AAO on appeal; i.e., whether the petitioner has established that he was subjected to battery and/or extreme cruelty by P-C-.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's January 23, 2008 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

⁴ USCIS promulgated a rule on April 17, 2007 related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing of this petition.