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

B9

FILE: [REDACTED]
EAC 06 243 50386

Office: VERMONT SERVICE CENTER

Date: APR 02 2009

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)

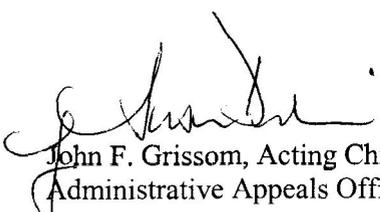
ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting 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 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 because the petitioner did not establish that he entered into marriage with his U.S. citizen wife in good faith and that she battered or subjected him to extreme cruelty during their marriage.

On appeal, the petitioner submits an additional statement and copies of documents previously filed.

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 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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ecuador who entered the United States on May 28, 1997 as a nonimmigrant

visitor. On April 25, 2001, the petitioner married G-L¹, a U.S. citizen, in New York. G-L subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on April 29, 2005.

The petitioner filed this Form I-360 on August 23, 2006.² On March 27, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good faith in entering the marriage and battery or extreme cruelty. The petitioner responded with additional evidence, which the director found insufficient to establish his eligibility. The director denied the petition on the grounds cited in the NOID on July 6, 2007 and the petitioner timely appealed.

On appeal, the petitioner reiterates his claims that he married his wife in good faith, but she subjected him to physical and verbal abuse during their marriage. The petitioner's claims do not overcome the grounds for denial. We affirm the director's decision and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with his wife in good faith:

- The petitioner's undated statement submitted below and his August 2, 2007 statement submitted on appeal;
- November 6, 2004 letter of the petitioner's landlord, [REDACTED];
- A Rent-A-Center receipt dated October 25, 2003 jointly issued to the petitioner and his wife;
- Copies of the unsigned joint federal and state income tax returns of the petitioner and his wife for 2002 through 2003, copy of their Internal Revenue Service (IRS) 2004 Form 1040X signed by the petitioner and his wife on June 17, 2005 and a copy of the petitioner's unsigned 2001 income tax return listing his filing status as married filing separately; and
- Photocopies of photographs of the petitioner, his wife and his wife's daughter at their wedding and on other, unspecified occasions.

In his first statement, the petitioner briefly reported that he met his wife in a bar in December 1999 and they got married a year later. The petitioner explained that at the time of their marriage, his wife was pregnant with another's man's child, but he did not care because he was in love with her. The petitioner stated that he and his wife moved to Newark and then Kearny, New Jersey in order to give

¹ Name withheld to protect individual's identity

² The petition was filed by an individual who is not a licensed attorney or an accredited representative, as defined in 8 C.F.R. §§ 103.2(a)(3) and 292.1(a)(4). The individual is not authorized to represent the petitioner pursuant to the regulation at 8 C.F.R. § 292.4(a) and her assertions will not be addressed in this decision.

the baby a better life. The petitioner did not further explain how he met his wife, their courtship, wedding, shared residence and experiences (apart from the alleged abuse).

In his statement submitted on appeal, the petitioner briefly asserts that at the beginning of their relationship, "everything was fine and beautiful," his love for his wife and her daughter grew and he worked two shifts to provide for them. Again, the petitioner does not provide any further, probative details regarding how he met his wife, their courtship, wedding, shared residence and experiences, apart from the alleged abuse. The petitioner's brief statements are insufficient to demonstrate that he married his wife in good faith.

The remaining, relevant evidence also fails to establish the petitioner's claim. The petitioner's landlord merely confirms that, as of November 6, 2004, the petitioner, his wife, and his wife's child had resided in an apartment in [REDACTED]'s property since September 2002. [REDACTED] provides no further, relevant information. The Rent-A-Center receipt shows that the petitioner and his wife jointly purchased a refrigerator in October 2003. The 2001- 2003 income tax forms are not signed and the petitioner did not submit evidence that they were filed with the IRS or the appropriate state agency even though the director noted this deficiency in the NOID. Although the petitioner and his wife both signed a joint IRS Form 1040X, the petitioner did not submit evidence that the form was actually filed with the IRS. Finally, the photographs picture the petitioner and his wife at their wedding and with the daughter of the petitioner's wife on other, unspecified occasions.

In his first statement, the petitioner indicated that he lived with his wife from 2001 until 2006. The single receipt, unverified tax forms, the brief statement from the former couple's landlord and the unexplained photographs do not demonstrate that the petitioner and his wife shared financial assets and liabilities or other significant, marital responsibilities that would ensue from a five-year marriage.

The relevant documentation and testimony does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

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

- The petitioner's undated statement submitted below and his August 2, 2007 statement submitted on appeal;
- Statements of the petitioner's landlords, [REDACTED] and [REDACTED];
- Copy of a Kearny, New Jersey Police Report regarding an incident on March 9, 2006; and
- A copy of a psychiatric evaluation of the petitioner by [REDACTED] dated May 3, 2007.

In his first statement, the petitioner asserted that his wife used drugs at home in the presence of her daughter. When the petitioner once told his wife to stop, he states that she grabbed his arm and spat and hit his face. The petitioner further states that he once found marijuana in the apartment and when he confronted his wife, she yelled at him, threatened to lie to the police and say that the drug was his and ripped and bleached his clothes. The petitioner also stated that his wife often left her baby with him while she went out all night and would also call his workplace pretending to be an immigration officer. The petitioner further related that his wife would throw food and beverages at him and tell him that she had spat on his food after he had eaten it. The petitioner reports that on another occasion, his wife struck him with a broom until he took it away from her. The petitioner explains that after these incidents, his wife apologized and the former couple reconciled until one day he found his wife's old boyfriend (the father of her child) at their home.

The petitioner stated that he called the police on two occasions. First, when he found his wife in his apartment trying to steal his belongings and she threw the telephone at his head, which caused him to bleed. Second, when he found his wife's old boyfriend in their apartment and he refused to leave. However, the petitioner only submitted a police report for the second incident. That report does not indicate that the petitioner's wife or her old boyfriend abused, threatened or otherwise harmed the petitioner. Rather, the report states that the petitioner initially agreed that his wife's boyfriend could stay and visit with his daughter, but then changed his mind. The report cites the petitioner as saying that his wife threatened to have her old boyfriend beat up the petitioner, although the petitioner does not mention any such threat in his statements. The report further notes that the old boyfriend of the petitioner's wife left their home without incident and the petitioner had no further contact with him.

The petitioner does not submit a police report from the first incident or explain why he was unable to obtain one. In his first statement, the petitioner also asserted that his boss witnessed all of his wife's "atrocities and craziness," but he did not submit any supporting statement from his boss.

The petitioner indicated that his landlords were aware of his wife's abuse, but their statements do not provide detailed, probative information sufficient to support the petitioner's claims. The May 30, 2006 letter jointly signed by the petitioner and [REDACTED] states that the petitioner's wife physically abused him, once attacked him with her girlfriend and that [REDACTED] had witnessed the abuse. The letter does not, however, describe any incident of abuse in probative detail. In their April 29, 2007 joint letter, [REDACTED] and [REDACTED] state that the petitioner's wife had a "dirty mouth" and they had to "put her out a few time [sic]." [REDACTED] state that on one occasion, the petitioner's wife was doing drugs and drinking, threw out the petitioner and moved her girlfriend in at which point the [REDACTED] called the police and threw her out. In his May 7, 2007 letter, [REDACTED] states that the petitioner's wife told him that the petitioner had to pay her every week or she would have him deported. The petitioner himself, however, stated that his wife threatened to "call immigration" if he did not give her money on just one occasion. [REDACTED] also confirms that he had to call the police to take the petitioner's wife out of their apartment when [REDACTED] found her smoking marijuana. The petitioner submitted no corresponding police report and does not discuss this incident in his statements.

psychiatric evaluation of the petitioner is of little probative value for three reasons. First, the evaluation is based on a single meeting with the petitioner on May 3, 2007 after the NOID was issued and over a year after the petitioner indicated that he separated from his wife. Second, although [REDACTED] diagnoses the petitioner with adjustment disorder with depression and anxiety, he does not explain how the petitioner's condition is related to his wife's alleged abuse. [REDACTED] only briefly states that the petitioner reported that he was physically and verbally abused by his wife on several occasions. [REDACTED] does not describe any incident of abuse and its effect on the petitioner in probative detail.

Third, the evaluation was conducted while [REDACTED] was under a disciplinary order of the New Jersey State Board of Medical Examiners ("the Board").³ The February 21, 2006 Consent Order of the Board reprimanded [REDACTED] for providing inadequate care for several patients by failing to document their need for controlled dangerous substances that he prescribed for them. [REDACTED] was officially disciplined and ordered to complete a medical record keeping course and a continuing medical education refresher course in psychiatry, pay \$5,000 in civil penalties and \$8,268 in investigative costs. [REDACTED] was also ordered to report for periodic review of his medical records for one year. On April 24, 2007, the Pennsylvania State Health Licensing Board also placed a public reprimand on [REDACTED] and assessed a \$5,000 civil penalty pursuant to the New Jersey Board's order.⁴ As [REDACTED] was under disciplinary supervision of the New Jersey Board at the time he examined the petitioner, his evaluation is of little weight.

On appeal, the petitioner asserts that his wife took other abusive actions against him that he did not mention below. For example, the petitioner states that his wife and her friends threatened to call the police on him if he did not cook for them; that his wife threatened to accuse him of sexually harassing her daughter and having him imprisoned; that his wife stole their television, refrigerator and other items; and that he often slept in parks because he did not want to return to their home. The petitioner does not explain why he did not mention these actions in his first statement. The petitioner's failure to discuss these incidents below and in probative detail on appeal detracts from the credibility of his assertions.

On appeal, the petitioner states that he went "to the program for the abused persons searching for a way to alleviate [his] sorrow and to calm [his] depression." He also states that his pastor was the first

³ *Matter of the Suspension or Revocation of the License of [REDACTED]* New Jersey Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, Consent Order (Feb. 21, 2006), available at: <http://www.nj.gov/oag/ca/bme/orders/>

⁴ Pennsylvania Department of State, State Health Licensing Boards, Disciplinary Actions, May 2007, available at: http://www.dos.state.pa.us/bpoa/lib/bpoa/disciplinary_actions/2007/05-07_health_licensing_boards.pdf.

person to help him. However, the petitioner submits no supporting documentation from the “program for abused persons” or his pastor.

The petitioner indicated that evidence of the alleged abuse would be available from several third parties, but he failed to submit such evidence. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The petitioner stated that his landlord and boss witnessed his wife’s abuse. He also stated that he called the police on two occasions, confided in his pastor and sought help from an “abused persons” program. While the statements of the petitioner’s landlords confirm that his wife abused drugs and alcohol and was removed from their apartment on a few occasions, they do not describe any incidents of abuse in probative detail. The petitioner submitted no statements from his boss, pastor or the abused persons program and the single police report is inconsistent with the petitioner’s rendition of the reported event. The petitioner also submitted a psychiatric evaluation that provides no detailed, probative description of the alleged abuse and its effects on the petitioner and was written by a psychiatrist at the time he was under a disciplinary order of the New Jersey State Board of Medical Examiners. These deficiencies detract from the credibility of the petitioner’s testimony.

In sum, the relevant evidence fails to demonstrate that the petitioner’s 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 petitioner has not demonstrated that he entered into marriage with his wife in good faith and that she battered or subjected him to extreme cruelty during their marriage. 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.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.