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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

BK

[REDACTED]

FILE:

EAC 06 178 52232

Office: VERMONT SERVICE CENTER

Date:

APR 20 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:

[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.

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 The director's decision will be withdrawn and the matter remanded for further action.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.

Counsel filed a timely appeal on November 27, 2007.

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 (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].

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 Pakistan who entered the United States in B-1/B-2 visitor status on January 31, 1991. He married C-K-,¹ a United States citizen, on May 1, 1994. C-K- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on September 24, 1997. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date. The Forms I-130 and I-485 were denied on January 28, 2008.

The petitioner filed the instant Form I-360 on May 22, 2006. On June 11, 2007, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner shared a joint residence with C-K-; that he was subjected to battery and/or extreme cruelty by C-K-; that he is a person of good moral character; and that he married C-K- in good faith. The petitioner

¹ Name withheld to protect individual's identity.

responded on August 7, 2007. After considering the evidence of record, the director denied the petition on October 25, 2007.

Battery or Extreme Cruelty

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

- An affidavit from the petitioner, dated May 15, 2006;
- A psychological evaluation from [REDACTED], dated August 1, 2005;
- The director's June 11, 2007 request for additional evidence;
- An affidavit from the petitioner, dated July 29, 2007;
- The director's October 25, 2007 denial letter;
- Counsel's statements on the Form I-290B, which was received at the service center on November 27, 2007; and
- An affidavit from the petitioner, dated November 1, 2007.

In his May 15, 2006 affidavit, which he submitted at the time the petition was filed, the petitioner stated that he is still unable to come to terms with his loss, and that the effect of his trauma has changed his life physically, emotionally, and financially. The petitioner reported that he had always been self-employed, and that he sells tribal beads and arts. He and C-K- participated in trade shows in different cities, and he wanted to reduce the amount of time that they spent traveling. He underwent extensive training on computer networking and e-commerce, and developed his own website in 1998.

The petitioner described how "it all started after we moved to Columbus, Ohio." C-K- began working in a floral shop. The petitioner started driving C-K- to and from work, and her co-workers "found out she was married to a heathen." Before they saw the petitioner, C-K- was just another worker. However, he petitioner reported that, after they saw him, C-K-'s co-workers began probing into her private life, and started inviting her to their church. According to the petitioner, it was the mission of C-K-'s co-workers to make C-K- a born-again Christian, and that their propaganda eventually succeeded in separating them. C-K-'s co-workers also had racial issues with the petitioner: C-K- told the petitioner that the white men with whom she worked told her that if their sister had married someone like the petitioner, they would have committed suicide due to shame.

According to the petitioner, C-K-'s church and her favorite radio station, WVCO, caused him a great deal of injustice. According to the petitioner, C-K-'s church and WVCO convinced C-K- that she had made a mistake marrying the petitioner, as he is not a Christian. As C-K- became more involved with her church, her behavior toward the petitioner became increasingly rude. The petitioner accompanied C-K- to church services "on a couple of occasions," but the members of the congregation, including the pastor, were unfriendly to him. C-K- told the petitioner that because he

sold items from other countries and religions, his business was not a good thing. She also objected to him selling crystals and minerals, because such items were used by pagans. On one occasion, she threw some of his boxes of inventory out of the apartment, and attempted to throw his computer and monitor out as well. After this incident, the petitioner was forced to rent a storage unit for some of his belongings.

The petitioner testified that C-K- told him that her religion did not allow her to marry someone from another religion, and wanted to move out of the couple's apartment because she had been told at church that, because the petitioner is not a Christian, she was sinning by being with him. She told him that he did not have a heart because he had not accepted Jesus. The petitioner stated that C-K- told him that if he became a Christian, she would be with him forever. The petitioner's race was also an issue for the people from the petitioner's church.

The petitioner also discussed the petitioner's involvement with the WVCO radio station, which increased over time. She became a regular volunteer at the radio station, and on one occasion it aired an interview with C-K- in which she discussed the petitioner and his religion. The petitioner stated that, after the airing of the interview, it seemed that C-K- was being placed under a great deal of pressure "to get rid of me."

According to the petitioner, because C-K- would not attend his permanent residency interview, he was unable to return to Pakistan for the funerals of his father, his sister, his cousins, his grandmother, and his aunts. The petitioner stated that the stress of his situation turned him into a nervous wreck, and caused him to become paralyzed. He was in bed for two months, and could not move without help. It was over six months before he was able to walk up and down stairs. According to the petitioner, during this time he lost his work, his car, his health insurance, and his credit, and became bankrupt.

The petitioner also submitted an August 1, 2005 psychological evaluation from ██████████ ██████████, which was based upon an interview conducted on July 30, 2005. ██████████ stated that the petitioner told him that C-K- abused him "verbally, physically, and psychologically." ██████████ testified that the petitioner told him that C-K- had slapped him, and pushed him against a wall. ██████████ stated that the petitioner told him that C-K- clearly indicated to the petitioner that she believed him to be a second-rate person because of his Muslim faith, and made frequent comments about his religion. The petitioner was humiliated by her behavior, and was devastated over the interview that aired on WVCO. According to ██████████, the petitioner told him that after C-K- left the petitioner in 1998, he became clinically depressed; had difficulty sleeping; lost 40 pounds; had difficulty focusing and concentrating; was chronically sad; had daily crying spells; and lost his sexual libido. ██████████ diagnosed the petitioner with major depressive disorder.

In his July 11, 2007 request for additional evidence, the director stated that the fact that the petitioner and his wife practiced different religions does not qualify as extreme cruelty for immigration purposes; rather, it is considered an issue of marital incompatibility. The director also notified the petitioner that common marital discord does not qualify as extreme cruelty, either. The

director stated that marital tensions and incompatibilities that place severe strains on a marriage, and in fact may lead to the marriage's disintegration, do not, in and of themselves, constitute extreme cruelty, and that Congress did not intend for the immigrant visa category at issue in this case to encompass the mental anguish generally associated with marital difficulties or abandonment. The director also noted that although the petitioner told ██████████ that C-K- had slapped and pushed him, the petitioner made no such claims in his own affidavit. According to the director, "[i]t would appear likely that had your spouse been physically abusive to you, that you would have indicated such information in your self-affidavit."

In his July 29, 2007 affidavit, the petitioner stated that he "left out a lot of details" in his first affidavit because he was "under the impression that ██████████ had explained much of the details." The petitioner also stated that, due to "personal decency," he "did not want to reminisce [about] all those painful details." According to the petitioner, the incident described by ██████████ in which C-K- slapped him was an isolated incident that occurred in 1997, and that there was no other physical violence in the relationship on a regular basis. The petitioner stated that "[t]o me it was not so much the physical abuse that was of a big concern than the mental and emotional abuse." The petitioner testified that mental and emotional trauma caused by C-K-'s behavior caused him extreme stress, and that his body was "aching all the time." The petitioner stated that he could not get out of bed without help, and that he could not go up and down stairs. According to the petitioner, he was doing his best to cope with his wife's "strange attitude toward me." He stated that the stress caused by C-F-'s behavior was worse than broken bones. The petitioner states that eventually he was unable to life a full glass of water; unable to wear shoes or socks without help; unable to use a nail clipper; unable to drive a car; and unable to turn a key in a lock. The petitioner stated that the trauma caused by C-F-'s behavior eventually led to other physical abnormalities, including a cyst that he had to have removed from his hand.

In his October 25, 2007 denial letter, the director found the petitioner's testimony insufficient to support his claim of battery or extreme cruelty. The director noted that the petitioner did not provide any evidence that the medical symptoms for which the petitioner was being treated resulted from the trauma to which he was inflicted by C-F-. The director also stated, again, that the intent of Congress in creating the visa classification at issue in this case was not to encompass the mental anguish generally associated with marital difficulties or abandonment.

Counsel asserts on the Form I-290B that the petitioner was slapped, pushed, and called names by his wife, and that he suffered mentally and emotionally as a result of her abuse. Counsel asserts that C-F- used the couple's religious differences to torture the petitioner, and to destroy his dreams of a good and lasting marriage.

In his November 1, 2007 affidavit, the petitioner states that he had always been a healthy person, with no arthritic conditions or any other physical or emotional ailments. The petitioner requests that USCIS "[p]lease trust me that my physical pain and handicap was due to that devastating stress brought upon me." The petitioner stated that "[e]ven after years of that [p]ost stress trauma of losing my wife to this day I have not fully recovered from the effects of that emotional damage."

Upon review of the entire record of proceeding, the AAO agrees with the director's determination that the petitioner has failed to establish that he was subjected to battery or extreme cruelty. The petitioner stated that C-F- slapped him on one occasion in 1997, and conceded that there was no other physical violence in the relationship on a regular basis. The petitioner, therefore, has not established that he was subjected to battery during the marriage.

Nor has the petitioner established that he was subjected to extreme cruelty during the marriage. As noted by the director on two separate occasions, the mental anguish that is generally associated with marital difficulties or abandonment does not qualify as extreme cruelty. The AAO also echoes the director's statement that marital tensions and incompatibilities that place severe strains on a marriage, and in fact may lead to the marriage's disintegration, do not, in and of themselves, constitute extreme cruelty.

The petitioner testified that the stress of his situation turned him into a nervous wreck, and caused him to become paralyzed. He was in bed for two months, and it was over six months before he was able to walk up and down stairs. He was unable to lift a full glass of water; unable to wear shoes or socks without help; unable to use a nail clipper; unable to drive a car; and unable to turn a key in a lock. The petitioner stated that the trauma caused by C-F-'s behavior eventually led to other physical abnormalities, including a cyst that he had to have removed from his hand. However, the petitioner submits no documentation regarding any of these symptoms. The AAO notes that [REDACTED] discussed none of these maladies in his evaluation of the petitioner. There is no evidence of record to document the petitioner's claim that he suffered from any of these conditions. Nor is there any evidence to demonstrate that such conditions were the result of maltreatment by C-F-.

Nor does [REDACTED]'s evaluation establish the petitioner's claim of extreme cruelty. First, as noted previously, [REDACTED] did not discuss the petitioner's paralysis and other medical conditions that the petitioner claims were caused by the stress created by C-F-'s treatment of him. Although the input of any mental health professional is respected and valuable, the record fails to reflect an ongoing relationship between a mental health professional and the petitioner, or any history of treatment for the major depressive disorder diagnosed by [REDACTED]. Further, the AAO notes that [REDACTED] evaluation of the petitioner was based upon a single interview between the petitioner and [REDACTED]. The conclusions reached in the evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the [REDACTED] findings speculative and diminishing his evaluation's value to a determination of extreme cruelty in this case.

While C-F-'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 physical violence or extreme cruelty, that C-F-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control

over the petitioner. 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 concurs with the director's determination that the petitioner has failed to demonstrate that C-F- subjected him to battery and/or extreme cruelty. However, the record indicates that the director did not issue a notice of intent to deny the petition (NOID) before he issued his decision. Although the record 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)² 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 issues before the AAO on appeal; i.e., whether the petitioner has demonstrated that he was subjected to battery or extreme cruelty by C-F-.

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 October 25, 2007 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.

² 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 on May 22, 2006.