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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



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FILE:

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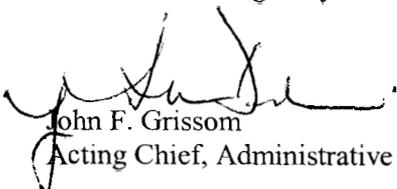
IN RE:

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 The director's decision will be withdrawn and the matter remanded for further action.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: (1) that his wife subjected him to battery or extreme cruelty; and (2) that he entered into marriage with his wife in good faith.

Counsel submitted a timely appeal on January 11, 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.

* * *

- (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 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.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .

* * *

- (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 petitioner is a citizen of the Dominican Republic who entered the United States in B-2 visitor status on January 19, 2006. He married C-M-¹ a United States citizen, on June 22, 2006. C-M- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on June 27, 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 January 12, 2007. On January 22, 2007, the director issued a request for additional evidence, and requested additional evidence to establish the immigration status of C-M-; that the petitioner and C-M- shared a joint residence; that the petitioner is a person of good moral character; and that the petitioner married C-M- in good faith. The petitioner responded on February 20, 2007. On July 23, 2007, the director issued another request for additional evidence, and requested additional evidence to establish that the petitioner and C-M- shared a joint residence; that C-M- subjected the petitioner to battery or extreme cruelty; and that the petitioner married C-M- in good faith. The petitioner responded on October 16, 2007.

After considering the evidence of record, the director denied the petition on December 11, 2007.

On appeal, counsel contends that the petitioner “provided way more than the 51% burden of proof” required for approval.

Battery and/or Extreme Cruelty

The first issue on appeal is whether the petitioner has established that he was subjected to battery or extreme cruelty by C-M-. In his December 20, 2006 affidavit, the petitioner stated that C-M- lied to him, telling him that she was going to work when in fact she was not, and that she would stay out until five or six o'clock in the morning. While she was out, the petitioner would stay home with C-M-'s two-year-old daughter. According to the petitioner, when he asked C-M- why she lied, she would scream at him. The petitioner also testified that C-M- would bring friends into the house, which he found disrespectful, since they were living in his aunt's home. He stated that this caused many arguments, which resulted in C-M- throwing things at the petitioner and insulting him. The

¹ Name withheld to protect individual's identity.

petitioner stated that when C-M- asked for money for her daughter's expenses he gave it to her, but that she would use the money to party with friends. The petitioner reported that C-M- left him on December 1, 2006. The petitioner concluded his affidavit by stating that he had been mentally abused to the point that he is very depressed; that he lost his job because he cannot concentrate on his duties; that he has considered suicide; and that he is going to see a psychologist.

In his February 5, 2007 affidavit, the petitioner repeated the assertions of his previous affidavit, and added that C-M- "did nothing but mentally abuse me to the point where I wanted to take my own life"; that C-M- smoked marijuana behind his back; and that, on the day she left, C-M- took all of the money that the petitioner had saved. He also stated that when he asked C-M- what was wrong, she told him that if he did not "shut up," she would kill him.

The record also contains a "Report of Client Participation" from the Victim Services Center (VSC), dated September 12, 2007. The VSC report stated that the petitioner referred himself to VSC on December 27, 2006, "due to the reported domestic violence that had occurred," and that he began individual counseling sessions on February 21, 2007. The report states that the petitioner's file was administratively discharged on June 21, 2007, after the petitioner dropped out of the program. In his October 12, 2007 letter, counsel stated that this report from VSC proved that the petitioner is receiving treatment as a result of the cruel treatment he received from C-M-.

A September 30, 2007 letter from the petitioner's church states that he is seeking "spiritual help."

The petitioner also submitted several affidavits in support of his contention that he suffered battery or extreme cruelty perpetrated by C-M-. In her September 24, 2007 affidavit, [REDACTED] the petitioner's aunt, stated that C-M- had extramarital affairs with other men; that C-M- threatened to call immigration authorities when the petitioner complained to C-M- about her practice of leaving him alone with her daughter; that the petitioner has gone into a depression; that C-M- became pregnant as a result of an extramarital affair; that C-M- left the petitioner to live with the father of her baby; that the petitioner went into shock; and that, as of the date of her testimony, the petitioner was receiving psychological treatment.

testified in his September 26, 2007 affidavit that C-M- had an extramarital affair; that the petitioner took care of C-M-'s daughter; that C-M- yelled at the petitioner; that C-M- called the petitioner names; that C-M- "menaced" the petitioner; and that, as a result of C-M-'s maltreatment, the petitioner became depressed, lost weight, lost sleep, became anxious, and went into an "emotional critical condition."

In their September 28, 2007 affidavit, which are identical to one another, [REDACTED] and [REDACTED] state that the marital relationship between C-M- and the petitioner started to deteriorate when the petitioner learned that C-M- was having an extramarital affair; that C-M- stayed out late while the petitioner stayed with her daughter; that C-M- threatened the petitioner's immigration proceedings when he complained; and that the petitioner became depressed.

In her August 21, 2007 affidavit, [REDACTED] states that the petitioner became depressed when C-M- had an extramarital affair and smoked marijuana; that the petitioner had to see a psychologist; and that the petitioner is very sad.

In her October 6, 2007 affidavit, [REDACTED] states that C-M- is rude, arrogant, vulgar, and a drug addict. She states that C-M- partied every day and left the petitioner to watch her child. She states that the petitioner is depressed, and spoke of taking his own life when he discovered that C-M- was pregnant by another man.

In her October 7, 2007 affidavit, [REDACTED] states that C-M- became pregnant as a result of an extramarital affair; that the petitioner stayed with C-M-'s daughter while C-M- smoked marijuana with her friends; and that the petitioner became depressed and suicidal.

In her October 7, 2007 affidavit, [REDACTED] states that the petitioner became depressed when C-M- had an extramarital affair; that the petitioner stayed with C-M-'s daughter while C-M- smoked marijuana with her friends; and that the petitioner became depressed.

In his September 26, 2007 affidavit, [REDACTED] states that C-M- and the petitioner had a good relationship until C-M- began cheating; that the petitioner stayed with C-M-'s daughter while C-M- stayed out late; and that the relationship deteriorated further when C-M- began embarrassing the petitioner in front of others.

In his December 11, 2007 denial, the director found that, although C-M-'s behavior caused emotional distress and disappointment, it did not rise to the level of battery and/or extreme cruelty as defined by the regulation. According to the director, the intent of Congress in creating this immigrant visa classification did not "encompass the mental anguish generally associated with marital difficulties, infidelities, and abandonment." The director noted that the VSC report did not indicate that the petitioner was subjected to battery or extreme cruelty, and that, in the testimony of record, no specifics concerning battery or extreme cruelty were indicated.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to demonstrate that C-M- subjected him to battery or extreme cruelty. As a preliminary matter, the AAO notes that [REDACTED]'s statement that the petitioner "is receiving psychological treatment" is not supported by the record. [REDACTED] executed her affidavit on September 24, 2007. As noted previously, the VSC report stated that the petitioner's file was administratively discharged on June 21, 2007, after the petitioner dropped out of the program. Accordingly, the petitioner was no longer receiving treatment in September 2007, as asserted by [REDACTED]. This discrepancy undermines her credibility as a witness. The AAO also notes that [REDACTED] stated in her affidavit that she lives in the Dominican Republic, so it is unclear whether she actually witnessed any of the incidents of abuse about which she testifies. As such, the evidentiary weight of her testimony with regard to those incidents is diminished. Further, the AAO notes that the affidavits of [REDACTED] and [REDACTED] are identical to one another, which raises questions as to who actually

wrote them, and undermines their evidentiary weight. Finally, the AAO notes, as did the director, that none of the testimony of record discusses specific instances of abuse. Rather, the testimony of record contains generalized statements about C-M- abusing the petitioner, yelling at the petitioner, staying out late, having an affair, etc. However, the record lacks specific and detailed testimony regarding specific occasions of abuse. For all of these reasons, the affidavits of record are of little probative value.

Moreover, the generalized allegations of abuse that are contained in the record of proceeding do not indicate that the petitioner was subjected to battery or extreme cruelty by C-M-, as those terms are defined 8 C.F.R. § 204.2(c)(1)(vi). While C-M-'s behavior may have been unkind and inconsiderate, it does not appear to have risen 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 affidavits submitted on behalf of the petitioner fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that C-M-'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.

Nor does the VSC report establish that the petitioner was subjected to battery or extreme cruelty. The VSC report states only that the petitioner referred himself to VSC; that he reported domestic violence; that the petitioner began individual counseling on February 21, 2007; and that his file was administratively discharged on June 21, 2007, after he dropped out of the program. The VSC report does not identify the behavior of C-M- as a causative factor in the petitioner's mental health condition, nor does it discuss the behavior of C-M- other than to state that the petitioner reported domestic violence.² Nor does the report indicate that the petitioner has been diagnosed with any mental health condition, regardless of the source.

As counsel notes on appeal, section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "All forms of relevant credible evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet

² Counsel asserts on the Form I-290B that the VSC report states that C-M- developed rage against the petitioner; that the petitioner became depressed; and that the petitioner demonstrated an anxiety and emotional condition. However, counsel is incorrect; the VSC report did not state these things.

the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless. As discussed above, while the evidence of record may be credible, the AAO does not find it sufficient to meet his burden of proof.

Again, while C-M-'s behavior may have been unkind and inconsiderate, it does not appear to have risen to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has failed to establish that C-M- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The second issue on appeal is whether the petitioner has established that the petitioner entered into marriage with C-M- in good faith. In his December 11, 2007 denial, the director stated that although the petitioner's evidence indicated a common residence, it did not demonstrate a good faith marriage. The AAO agrees with the director's determination. In a case such as this, where there is little physical evidence of the petitioner's intentions upon entering the marriage, the petitioner's testimony is crucial. However, the petitioner's testimony, with regard to his intentions upon entering the marriage, is vague. Although the record also contains affidavits from the petitioner's friends and family members, their testimony is insufficiently vague. Simply asserting that the petitioner married C-M- in good faith is not sufficient; details must be provided. The record, as it presently stands, lacks basic information about the relationship between the petitioner and C-M-. The record lacks information about the couple's first introductions; first impressions; their decision to date; their courtship; the types of activities they enjoyed together; the length of their courtship; their decision to marry; the length of their engagement; their wedding ceremony; and their early life together. Such information would allow the AAO to examine the petitioner's intentions upon entering into the marriage. Without such information, the AAO cannot examine the petitioner's intentions, as there is little physical evidence that speaks to his intentions upon entering the marriage. The evidence of record fails to demonstrate that the petitioner entered into marriage with C-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that C-M- subjected the petitioner to battery or extreme cruelty; and that the petitioner entered into marriage with C-M- in good faith. 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)³ 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-M-, and whether he married C-M- in good faith.

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 December 11, 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.

³ 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 January 12, 2007.