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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**

B-7

APR 28 2009

FILE:

EAC 07-234-50056

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

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.

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 classification as a special immigrant 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 having been battered or subjected to extreme cruelty by his U.S. citizen spouse. The director denied the petition finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage.

The petitioner, through counsel, submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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 regulation at 8 C.F.R. § 204.2(c)(1) provides guidance regarding relevant eligibility requirements:

(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 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.

Procedural History and Pertinent Facts

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ghana who was admitted to the United States on or about July 31, 2001 as a B-2 nonimmigrant visitor. On April 6, 2005 the petitioner married K-D-¹ a U.S. citizen, in Virginia. On July 8, 2005, K-D- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status. Both the I-130 Petition and the I-485 Application were subsequently denied on September 21, 2006 as the couple failed to appear for an interview scheduled with U.S. Citizenship and Immigration Services (USCIS) on July 13, 2006.

The petitioner filed the instant I-360 Petition on July 30, 2007 along with his declaration, dated July 28, 2007, in which he described how he met K-D-, the period before they married and the abuse he suffered during their marriage. On August 29, 2007 USCIS issued a Request for Evidence (RFE) of good moral character; in response the petitioner submitted a criminal history record check of Maryland's Criminal Justice Information System showing no criminal history. USCIS issued a second RFE on May 5, 2008 asking for (1) evidence of the couple's joint residence; (2) evidence that the petitioner had been battered or subjected to extreme cruelty by

¹ Name withheld to protect individual's identity.

his U.S. citizen spouse; and (3) evidence that the petitioner entered into his marriage in good faith. The petitioner responded on May 30, 2008 by submitting, as evidence of abuse, a psychological evaluation based on a clinical interview and tests administered on October 5, 2007; and affidavits from two friends and his brother, confirming some of the petitioner's claims regarding his wife's behavior. He also submitted three affidavits attesting to the petitioner's good moral character. On July 31, 2008, the petitioner submitted his own affidavit explaining the lack of additional documents, including that the couple did not have joint accounts and his wife filed her taxes independently; he also submitted a copy of a lease agreement that he, his wife and the landlord signed December 17, 2004; an affidavit from a Church Evangelist with whom the petitioner spoke about his marital problems; and an affidavit from an Associate Director of Undergraduate Studies at the University of Maryland, who noted that the petitioner's weak scholastic performance during the fall 2005 and spring 2006 semesters was consistent with the domestic problems he experienced at that time. The director found that the petitioner had established all of the eligibility requirements except the requirement to show that he had been battered or subjected to extreme cruelty by his U.S. citizen spouse. Accordingly, on September 11, 2008, the director denied the petition on that basis.

The petitioner, through counsel, submits a timely appeal along with his own statement, counsel's brief, and a page from a website, domesticviolence.org, providing a list of abusive acts. As will be discussed, the AAO concurs with the finding of the director that the petitioner failed to establish that he had been battered or subjected to extreme cruelty by his U.S. citizen spouse.

Evidence of Battery or Extreme Cruelty

The evidence of battery or extreme cruelty in this case is comprised solely of affidavits, the petitioner's statements, and a psychological evaluation that is based on the petitioner's account of his spouse's actions. At the time of filing, the petitioner submitted only his statement; in response to the second RFE, he submitted affidavits from two friends and his brother. One friend and his brother repeated what the petitioner told them about his wife's behavior; another friend, who rented an apartment to the petitioner and his wife, stated that they heard K-D- partying, smoking, drinking and playing loud music while the petitioner was away and knew that she had been smoking marijuana with her friends. The petitioner later submitted two additional affidavits, noted above, indicating that he had spoken to his Church Evangelist and an advisor at the University of Maryland about his problems. On appeal, the petitioner provided a second statement regarding abuse by his spouse which does not provide any significant details that he did not previously provide.

In his affidavits, the petitioner claimed that he and K-D- met at a night club in Washington D.C. in September 2004, liked each other immediately, and were dating exclusively by October 2004; they were inseparable, partying and enjoying each other's company; they rented an apartment together in December 2004 and decided to get married in April, 2005. The petitioner claimed that for six months they were fine but that K-D- wanted to continue to go to clubs, and he wanted a quieter lifestyle. He described the problems that followed: when he was at work K-D- would invite friends over who were taking drugs, and when the petitioner confronted her about this, she

called him names; she told him he should go back to his country and threatened to get him deported; she would laugh with her friends about his sexual habits; she would refuse to have sex with him; once he found K-D- in bed with another woman and he found out that she had multiple sex partners at “swingers parties.” He stated that he feared contracting a sexually transmitted disease and suffered from her lying and found it very difficult to live with her verbal and emotional abuse; she refused to get counseling; she refused to attend his adjustment of status interview; and she finally left him in August 2006.

Based on this evidence, and affidavits confirming the petitioner’s claims, the petition was denied, as the petitioner’s statement was determined to be insufficient to establish that his wife had subjected him to battery or extreme cruelty as required under the Act. The director noted that marital difficulties, including that K-D- may have been involved in extra-marital relationships and other tensions and incompatibilities described by the petitioner which place severe strains on a marriage, do not amount to extreme cruelty.

On appeal, the petitioner repeats his claims. Neither the petitioner nor others indicate that there was any physical abuse in the marriage. The affidavits submitted on his behalf, and the psychological evaluation which concludes that the petitioner suffered from depression, are based on the same claims discussed by the petitioner in his statements regarding how his wife treated him and the problems the couple had. Based on these problems the affiants all concluded that his spouse abused the petitioner and the petitioner suffered because of his wife’s abuse.

In this case, we do not find the allegations of abuse as described by the petitioner and others sufficient to meet the petitioner’s burden of proof. The petitioner has failed to allege any threat of or actual physical act of abuse perpetrated against him by K-D-. The petitioner’s allegation of extreme cruelty is based upon his claims that his spouse called him names and put him down, wanted to party with her friends despite his wishes, refused to have sex with him, and had extramarital affairs. The petitioner does not indicate that he was threatened or forced to do anything against his will. We acknowledge the petitioner’s claim that his wife’s behavior caused him distress and that he was disappointed that his marriage did not work out. As described, K-D-’s actions, while maybe unkind and inconsiderate, 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.

Conclusion

The claims made by the petitioner and the general statements submitted on his behalf fail to establish by a preponderance of the evidence that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that K-D-’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.

The petitioner has failed to establish that he was battered or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the

petitioner is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.