

identifying data deleted to
clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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

B9



FILE:



EAC 07 006 50250

Office: VERMONT SERVICE CENTER

Date: APR 28 2009

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:

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.


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition approved.

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 timely appealed on September 14, 2007.¹

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

¹ The petition and appeal were filed by an attorney who has been suspended from practice before the U.S. Department of Homeland Security (DHS). U.S. Dept. of Justice, Executive Office for Immigration Review, *In Re Krain*, Order of Immediate Suspension (Feb. 19, 2009). Accordingly, the attorney will not be recognized in these proceedings.

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 Ecuador who entered the United States, without authorization, on or around November 5, 1993. He married A-S-², a citizen of the United States, on April 2, 1996. They were divorced on January 29, 2007.

The petitioner filed the instant Form I-360 on October 2, 2006. On April 17, 2007, the director issued a request for additional evidence, and requested evidence regarding the status of the couple's divorce

² Name withheld to protect individual's identity.

proceedings, as well as additional evidence to establish that the petitioner was subjected to battery and/or extreme cruelty by A-S-. The petitioner responded to the director's request on April 26, 2007, and submitted additional documentation.

The director issued a notice of intent to deny (NOID) the petition on June 19, 2007, which notified the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish that he was subjected to battery and/or extreme cruelty by A-S-. The petitioner responded on July 25, 2007 and submitted additional evidence.

After considering the evidence of record, the director denied the petition on August 17, 2007

Battery or Extreme Cruelty

The sole issue on appeal is whether the petitioner has established that he was subjected to battery and/or extreme cruelty by A-S- during their marriage. The record contains the following information relevant to the petitioner's claim of battery and/or extreme cruelty:

- The petitioner's April 22, 2007 response to the director's request for additional evidence;
- [REDACTED] psychological evaluation of the petitioner, dated December 11, 2006;
- An undated affidavit from the petitioner, submitted to the director on April 26, 2007;
- The petitioner's divorce filing, dated September 27, 2006, and filed with the Superior Court of New Jersey, Mercer County, on October 26, 2006;
- The "final judgment for divorce by default," dated January 29, 2007;
- The director's NOID, dated June 19, 2007;
- The director's denial decision, dated August 17, 2007;
- The Form I-290B, submitted on September 14, 2007;
- An undated affidavit from the petitioner, submitted on September 14, 2007;
- An affidavit from [REDACTED], dated September 12, 2007.
- An affidavit from [REDACTED], dated August 25, 2007;
- **An undated affidavit from [REDACTED], submitted on September 14, 2007;**
- An affidavit from [REDACTED], dated August 29, 2007;
- An undated affidavit from [REDACTED] **submitted on September 14, 2007;** and
- An updated letter from [REDACTED] dated September 11, 2007.

In his December 11, 2006 evaluation of the petitioner, [REDACTED] stated that he had evaluated the petitioner on three occasions. According to [REDACTED], three meetings were necessary because the petitioner was embarrassed, and felt uncomfortable disclosing details. [REDACTED] stated that the petitioner told him that his marriage to A-S- was stable and satisfying for four years. However, the petitioner told [REDACTED] that, in 2000, A-S- began drinking. In 2001, she began using cocaine. [REDACTED] testified that the petitioner told him that A-S- became pregnant twice "during the time of her alcoholism." One pregnancy ended as the result of a

miscarriage, and the other ended as a result of an abortion. [REDACTED] states that the petitioner told him that he knew he was not the father of either child because, as he was terrified of A-S- becoming pregnant while abusing substances, he used protection during intimate relations. Further, A-S- told the petitioner that he was not the father of either child. The petitioner testified to that, by 2003, "his life with her became impossible," as she beat him, cut him with a knife, and threatened to have him deported from the United States. He also testified to [REDACTED] that he was afraid to defend himself, as he worried that if he touched A-S- in any way, she would call the police and have him deported from the United States for spousal abuse. As such, he tried to avoid her as best he could. The petitioner testified to [REDACTED] that A-S- beat him severely in May 2005,³ after which the petitioner finally left the marriage. [REDACTED] stated that the petitioner changed jobs so that A-S- could not find him, and that he had had no contact with A-S- for "approximately seven months." [REDACTED] diagnosed the petitioner with Post Traumatic Stress Disorder (PTSD), and recommended ongoing psychological treatment to address his PTSD.

In his undated affidavit, the petitioner stated that the first four years of his marriage to A-S- were the most beautiful years of his life. However, after that time, A-S- "became very violent and I could not control her and it seemed all she wanted to do was attack me." The petitioner described an incident on June 12, 2003 in which A-S- cut his arm with a knife because he had no money to give her. He also stated that A-S- became pregnant twice, and had two abortions. He stated that he "was in the streets at night looking for her," but when he found her, A-S- cursed at him and called him names. He also stated that A-S- cursed at him in front of his friends; that they could not go into stores together because "she would start to scream at me and she would always manage to have the manager of the store tell us to leave." The petitioner testified that A-S- "would just walk up to me an[d] punch me in the face just for the fun of it," causing the petitioner to go to work with black eyes. He stated that A-S- "would come to my place of employment and start screaming for monies" and call him names. The petitioner stated that he had no friends, as A-S- would not allow anyone into the house, but when his friends did come to the house, A-S- would call him names and take drugs in front of his friends. The petitioner also described two instances in which A-S- nearly burned down their home. The petitioner described an incident in December 2005 during which A-S- attacked the petitioner with a stick while he was sleeping, which caused the petitioner severe back pain for a month. The petitioner also stated that around this time A-S- began standing outside the house, in the street, and call him names. The final incident of abuse described by the petitioner occurred on May 30, 2006, when A-S- tried to kill him. According to the petitioner, A-S- arrived at the home with a female friend. A-S- told the petitioner that she was a lesbian, removed her clothing, and began kissing the other woman. The petitioner tried to pull A-S- away, but both women tried to strangle him. A-S- took a vase from a table and struck the petitioner's head with it, knocking him out. When he woke up, he was bruised, as the two women had kicked his legs and groin area. According to the petitioner, he could not work for four weeks, and still has severe pain in his groin area. The petitioner moved out of the house after this incident. The petitioner stated

³ This appears to be a typographical error; the petitioner indicated in his testimony that this incident occurred in May 2006.

that he had been robbed of his happiness; that he now walks in shame; and that his “manhood is gone.” He stated that he tried to report his situation to the police, but that thought “it was a joke or funny to see a man with swollen eyes and to know that his wife beat him.” The petitioner stated that he lived with his wife for ten years, and that she abused him for six of those years.

According to the petitioner’s “verified complaint for divorce,” which was dated September 27, 2006 and filed with the Superior Court of New Jersey, Mercer County, on October 26, 2006; A-S- had been guilty of extreme cruelty, beginning in June 2003. According to the complaint, A-S- attempted to stab the petitioner with a knife in June 2003, but ended up cutting him; that A-S-’s drug usage made her so volatile that all she wanted to do was abuse the petitioner, and that she inflicted numerous bruises upon the petitioner’s body on numerous occasions. The complaint stated that, in December 2005, A-S- knocked out the petitioner by striking him with a pole, and threw china at him because he would not give her money for drugs. On another occasion, A-S- struck the petitioner with a baseball bat on his back, causing him to fall, which caused back problems that continue. According to the complaint, A-S- also spit in the petitioner’s food so that he could not eat it. The complaint also relayed the story of the May 30, 2006 incident with A-S- and her new lover, except that it stated that the petitioner was not able to go to work for two weeks after the incident. The complaint also stated that A-S- removed all the household furnishings she and the petitioner had purchased, and sold them for drugs. The complaint explained how A-S- would harass the petitioner at his place of employment; humiliate him in public; threaten to have him deported; and strike him “for no apparent reason at all.” According to the complaint, the petitioner “lost two places of employment” due to the harassment of A-S-.

The petitioner also submitted the “final judgment for divorce by default,” which was entered on January 29, 2007. The AAO notes that [REDACTED] annotated the final judgment to note that it was a judgment by default (he also noted that S-A- had been duly served with notice of the proceeding). The order stated that S-A- had been guilty of extreme cruelty to the petitioner.

In his June 19, 2007 NOID, the director identified five “discrepancies between the documents submitted.” First, the director noted that although the divorce complaint stated that the petitioner had lost two jobs due to A-S-’s harassment, the petitioner made no such assertion in his affidavit. Rather, the petitioner stated only that his boss had told him that he would call the police if A-S- returned. Second, the director noted that although the petitioner stated that he did not have any friends, he described instances in which A-S- humiliated the petitioner in front of his friends. Third, the director noted that although the divorce complaint stated that the petitioner had missed two weeks of work due to his injuries from the May 30, 2006 incident, the petitioner’s affidavit stated that he had missed four weeks of work. Fourth, the director noted that [REDACTED] evaluation stated that A-S- became pregnant twice, with one pregnancy ending in a miscarriage and one ending in an abortion. However, in his affidavit the petitioner stated both that A-S- lost one of the babies because she was taking drugs and drinking, but also that A-S- had two abortions. Fifth, the director noted that [REDACTED] evaluation stated that the petitioner had changed jobs so that A-S- could not find him, and that he had not had contact with A-S- in seven months. However, the petitioner stated in his affidavit that, after he left A-S-, she threatened to harm him with a knife

if he did not come home. The director stated that these multiple discrepancies rendered the evidence of record insufficiently reliable as evidence of battery or extreme cruelty, and that such inconsistent testimony called into question the reliability of the petitioner's testimony.

On appeal, the petitioner submits additional evidence, including another personal affidavit; another letter from [REDACTED] affidavits from two previous employers, and affidavits from friends and family members.

With regard to the first discrepancy identified by the director, the petitioner submits documentary evidence to verify that he was in fact terminated from two places of employment due to harassment from A-S-. In his September 12, 2007 letter, [REDACTED] testifies that he employed the petitioner at his grocery store and bakery. [REDACTED] states that A-S- came into his establishment and disrupted his business. According to [REDACTED] A-S- "would come into my business and walk right into the kitchen and punch [the petitioner]." He states that if the petitioner refused to give her money, she would strike him, and that she "would stand in front of the store and in front of my customers she would call him obscene names." According to [REDACTED], "I could not allow this type of behavior in my establishment. [A-S-] is out of control."

[REDACTED] also testifies that U.S. Citizenship and Immigration Services (USCIS) "should also be aware that [A-S-] tried to have me give her [the petitioner's] paycheck under the guise of threatening deportation." [REDACTED] states that the petitioner's friends were afraid of A-S- "because of the type of family that [she] had," and that "some of the workers stayed away from [the petitioner] for they feared that [A-S-'s] brother would harm them also." He also states that, two weeks after he fired the petitioner, A-S- came to the establishment, looking for the petitioner. She began yelling at the other workers, as she was upset that the petitioner was not there. [REDACTED] states that he still gets calls from A-S- looking for the petitioner, and that she sends messages to him through his former co-workers that she is going to harm him.

Finally, [REDACTED] testifies that he was present on one occasion when the police were called. According to [REDACTED] the police officers seemed not to care when he showed them the petitioner's swollen face and he was surprised when the police officers asked the petitioner if he wanted to "risk himself by going to court," as they felt the court would favor A-S- since the petitioner is "an illegal."

The petitioner also submits a letter from [REDACTED], another of the petitioner's previous employers, on appeal. In his August 25, 2007 letter, [REDACTED] states that although the petitioner was a good worker, A-S- "would come into the restaurant and harass him." According to [REDACTED] on one occasion A-S- grabbed a bucket of sauce and poured it on the petitioner. On another occasion, A-S-'s brother grabbed the petitioner by the collar and pulled him outside the restaurant. [REDACTED] states that such incidents caused fear on the part of both his workforce and of his customers. He states that he told the petitioner to file charges against A-S-, but that the petitioner informed him that he had already tried, but that the police would not listen to him. In

conclusion, [REDACTED] states the following: "I made the decision that I did not need the trouble and I discussed it with [the petitioner] and he as a gentleman told me that he understood."

The AAO finds no reason to doubt the veracity of either [REDACTED] or [REDACTED] and, accordingly, it finds that the petitioner has submitted sufficient evidence to clarify the first discrepancy identified by the director.

With regard to the second discrepancy identified by the director; i.e., the petitioner's statement asserting that he had no friends, and his later descriptions of instances in which A-S- humiliated the petitioner in front of his friends, the petitioner explains that he was discussing the friends he had before A-S- became abusive and stopped being his friends because of A-S-. The AAO finds this explanation reasonable, as well as supported by the testimony of record, as the record contains a great deal of testimony with regard to how A-S- behaved in the presence of the petitioner's friends. It is not unreasonable to believe that such behavior would lead the petitioner's friends to stop associating with him.

The third discrepancy identified by the director in his NOID was that although the divorce complaint stated that the petitioner had missed two weeks of work due to his injuries from the May 30, 2006 incident, the petitioner's affidavit stated that he had missed four weeks of work. On appeal, the petitioner explains that he missed four weeks of work, not two, and that his prior attorney made a typographical error in the divorce complaint. Again, the AAO finds the petitioner's assertion reasonable. While it is important to note inconsistencies and discrepancies in any record of proceeding, the AAO finds that, in this particular case, this particular inconsistency is both minor and explainable. The fact that the petitioner missed a significant period of work is not in dispute, and is consistent with other testimony of record. A few errors or minor discrepancies are not reason to question the credibility of an alien seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). The AAO, therefore, finds that the petitioner has clarified the third discrepancy identified by the director in his NOID.

The fourth discrepancy identified by the director in his NOID pertained to A-S-'s two pregnancies. As noted by the director, [REDACTED] stated in his evaluation stated that A-S- had one abortion and one miscarriage. The petitioner stated in his first affidavit that A-S- had one abortion and one miscarriage, but then later stated that A-S- had had two abortions. On appeal, the petitioner states that A-S- "was pregnant twice and I am only repeating what she told me that she had an abortion because she was taking drugs to me an abortion and miscarriage [are the] same thing." First, the AAO notes that, because the petitioner was not pregnant; he was privy only to the information that A-S- elected to share with him. More importantly, the AAO finds that the issue of A-S-'s pregnancies is not relevant to the issue of the battery to which the petitioner was subjected by A-S-. The AAO, therefore, finds this to be the type of minor inconsistency described in *Spencer Enterprises*. Accordingly, the AAO will not impeach the credibility of the petitioner's testimony on the basis of the uncertainty of record with regard to whether A-S- had one abortion and one miscarriage, or two abortions.

In the fifth discrepancy identified in his NOID, the director noted that [REDACTED] evaluation stated that the petitioner had changed jobs so that A-S- could not find him, and that he had not had contact with A-S- in seven months. However, the petitioner stated in his affidavit that, after he left A-S-, she threatened to harm him with a knife if he did not come home. On appeal, the petitioner states that the incident in which A-S- threatened the petitioner with a knife if he did not come home happened the day after the petitioner left the marriage in May 2006 and was at his cousin's home. The petitioner also states that A-S- calls family members of the petitioner, and sends him messages that she is going to hurt him. This is consistent with the testimony of the petitioner's previous employers, who stated that A-S- continued to attempt to contact the petitioner through his former co-workers. For these reasons, the AAO finds that the explanation offered by the petitioner is reasonable and sufficiently clarifies the fifth inconsistency identified by the director in his NOID.

As the petitioner has clarified the inconsistencies identified by the record to the satisfaction of the AAO, it finds no reason to question his credibility as a witness.

In his undated affidavit, which was submitted on September 14, 2007, the petitioner repeats his earlier assertion that he lost jobs due to the behavior of A-S-, as she would come to his place of employment and demand money and call him names. He states that A-S-'s brother would usually accompany her on these visits, and that he would grab the petitioner and punch him, that A-S- would kick him, and that they would then steal his wallet. The petitioner states that he has no contact with A-S-, but that she calls everyone he knows and tells them she is going to kill him. According to the petitioner, he lives in fear, as he knows that A-S- wants to hurt him. With regard to the incident described by [REDACTED] in which the police officers asked the petitioner whether he really wanted to take the risk of prosecuting A-S-, since he was "an illegal," the petitioner added that one of the police officers laughed at him and told him that he "should be a man."

The petitioner also submits three affidavits from friends and family members of the petitioner describing the petitioner's maltreatment by A-S-.

a former co-worker of the petitioner, states in her affidavit that she witnessed A-S- walk into the kitchen of the establishment in which she and the petitioner were working, and dump a bucket of sauce over the petitioner. She states that she tried to stop A-S- from entering the kitchen, but that A-S- pushed her aside. [REDACTED] states that she was very frightened of A-S-, as she had told [REDACTED] and her co-workers "nasty things." She also describes how she was present on the day the petitioner was fired, and that she saw him crying outside afterward.

who describes himself as a former friend of the petitioner, states in his affidavit that he witnessed A-S- abusing the petitioner. [REDACTED] states that A-S- and her brother would beat the petitioner when he did not give A-S- money. He states that he witnessed A-S- calling the petitioner profane names on many occasions. [REDACTED] also discusses an incident after he told A-S- to stop hurting the petitioner. According to [REDACTED] - turned to him and told him to mind his own business, or that she would have him "taken care of." [REDACTED] describes how most of the petitioner's friends "pulled away" from him because "we know the friends that [A-S-]

has are not people that you want to have as enemies,” and that he did not want to put his children in danger. According to [REDACTED], the people that knew the petitioner felt sorry for him, but also knew that A-S- is violent and “can get her friends to do mischief.” [REDACTED] states that every time he sees A-S-, she tells him to tell the petitioner that she will get him, and that A-S-’s brother told him that he is “going to pack [the petitioner] on ice.”

In her August 29, 2007 affidavit, [REDACTED], the petitioner’s cousin, states that she did not previously offer her testimony because she is afraid of A-S- and her brother. She states that she personally witnessed A-S- becoming violent at the couple’s home. She also states that she took the petitioner into her home one night after A-S- had beaten him, and describes how one of his eyes was bruised shut, and that he was unable to swallow. According to [REDACTED] A-S- came to her home the next day and slashed the tires on her car. [REDACTED] explains that she did not prosecute A-S- because she feared for the safety of her children, as even if the police arrested A-S- and put her in jail, it would not protect her children from A-S-’s relatives.

[REDACTED] also testifies that A-S-’s brother threatened her husband. According to [REDACTED] A-S-’s brother told her husband that if they let the petitioner stay in their home, he “was going to wish for air.” After that threat, [REDACTED] husband told the petitioner that he could not help him. [REDACTED] states that she was ashamed of taking such an action, but explains that she has children.

[REDACTED] also describes an incident that occurred after the petitioner filed for divorce from A-S-. According to [REDACTED] A-S- came to her house with the divorce papers, and started swearing at [REDACTED] in front of her children. [REDACTED] asked A-S- to leave but, instead, A-S- pulled down her underwear and urinated on the divorce papers in front of the children. [REDACTED] states that A-S- also told her that the divorce papers were not going to stop her.

Finally, the AAO turns to an updated letter from [REDACTED] dated September 11, 2007. [REDACTED] Hershenberg states that the petitioner has been under his care since October 3, 2006 for PTSD and chronic and major depressive disorder. [REDACTED] states that although the petitioner’s depressive symptoms are improving, his PTSD symptoms have not improved.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has established that A-S- subjected him to battery or extreme cruelty. As noted previously, the AAO disagrees with the director’s findings with regard to the credibility of the petitioner’s testimony. Furthermore, the petitioner has submitted detailed and credible testimony from several individuals who witnessed various instances of abuse.

Conclusion

The petitioner has established that A-S- subjected him to battery or extreme cruelty. The AAO concurs with the director’s determination that the petitioner meets all other statutory requirements.

Accordingly, the petitioner has established that he is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition will be approved.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal is sustained.

ORDER: The decision of the director is withdrawn. The appeal is sustained, and the petition is approved.