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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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JUL 13 2009

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 08 007 51487

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:

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 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 dismissed.

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 March 10, 2009.

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.

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.
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> * * *
>
> (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 Romania who entered the United States in B-2 visitor status on November 24, 2000. He married I-S,[1] a citizen of the United States, on November 17, 2005.

The petitioner filed the instant Form I-360 on October 1, 2007. On October 16, 2007, the director issued a request for additional evidence, and requested evidence to establish that I-S- and the petitioner were married to each other; that I-S- is a citizen or lawful permanent resident of the United States; that he shared a joint residence with I-S-; that I-S- subjected the petitioner to battery or extreme cruelty; that the petitioner is a person of good moral character; and that the petitioner married I-S- in good faith. The petitioner responded to the director's request on November 6, 2007.

[1] Name withheld to protect individual's identity.

The director issued a second request for additional evidence on November 18, 2008, and requested additional evidence to establish that I-S- subjected the petitioner to batter or extreme cruelty. The petitioner responded on January 30, 2009.

After considering the evidence of record, the director denied the petition on February 24, 2009.

Battery or Extreme Cruelty

The sole issue on appeal is whether the petitioner has established that I-S- subjected him to battery or extreme cruelty. In the undated self-affidavit that he submitted in response to the director's October 16, 2007 request for additional evidence, the petitioner stated that he had a serious automobile accident, which left him with a broken foot and shoulder. He stated that when he stopped taking pain medication, he began noticing his wife's behavior: she began coming home late; she was not talking to the petitioner; and he was forced to ask his friends to bring food to him during the day. The petitioner explained how he tracked her cell phone usage and hired a private investigator to follow I-S-, and was able to learn "the truth." Although the petitioner did not explain what he meant by his usage of the phrase "the truth," based upon the report of the private investigator, the AAO presumes he is referring to I-S-'s alleged extramarital affair. The petitioner stated that when he confronted I-S- with "the truth," she verbally attacked him, told him that she needed time, and told him that she was going to move into her parents' home. He also stated that I-S- withdrew money from the couple's checking account without his knowledge.

The record also contains a September 11, 2007 report from , who interviewed the petitioner on September 4, 2007. stated that the petitioner told him that, after the automobile accident, which had occurred in May 2007, I-S- became restless, as the petitioner was able to go out socially. The petitioner told that on June 25, 2007, I-S- told him that he had gotten fat, and that she could no longer sleep with him. I-S- also stopped cooking for the petitioner. Later, the petitioner discovered that she was having an affair. On July 31, 2007, I-S- left the marital residence. The petitioner told that I-S- withdrew half of the money from the couple's joint bank account, even though she had never made a deposit into the account. diagnosed the petitioner with adjustment disorder, with depressed mood.

The director found the petitioner's assertions unconvincing, and issued a request for additional evidence on November 18, 2008. In his request, the director noted that although the petitioner testified that I-S- had had an extramarital affair, his testimony did not indicate that the marital difficulties discussed by the petitioner were greater than those experienced by many couples, and notified the petitioner that I-S-'s behavior as described by the petitioner did not rise to the level of battery or extreme cruelty. The director stated that marital tensions and incompatibilities, which serve to place strains on a marriage, and which may lead to the marriage's disintegration, do not, by themselves, constitute extreme cruelty.

In his January 10, 2009 self-affidavit, the petitioner stated that before he and I-S- were married, he learned that she had $30,000 in debt from her first marriage. The petitioner stated that he was in love, and told her that he would take care of it. He also paid a tax bill to the Internal Revenue Service. Later, I-S- wanted to buy a house, but the petitioner refused. According to the petitioner, I-S- began acting in a "weird and stupid" manner after he refused to buy a house, and stopped cooking for him. The petitioner stated that I-S- told him he was not as smart as he thinks, which humiliated him. Accordingly, they began looking at houses a couple of weeks later. The petitioner also described how I-S- refused to travel with him to New York for Christmas and New Year's Eve, as she did not want to leave her parents and her job. Finally, the petitioner discussed I-S-'s behavior after his automobile accident, which occurred on May 18, 2007. As I-S- refused to cook for him, he was forced to beg people to bring him food, and also to take him to his doctor's visits. According to the petitioner, I-S- began having an extramarital affair, withdrew most of the money from their joint bank account, and left the residence, without apology on July 31, 2007. However, the petitioner reported that, even after she left the residence, I-S- called him repeatedly and, when she called, was possessive and raised her voice. The petitioner stated that I-S- tried to divorce him, behind his back, in December 2007, which according to the petitioner, was her last act of control.

The petitioner also submitted letters from , and in his response to the director's request for additional evidence. In his January 9, 2009 letter, Mr. stated that, at one point, he was the only one of the petitioner's friends who was allowed to visit the couple's apartment. He stated that, after the petitioner married I-S-, the petitioner became reserved and "afraid of life." He also stated that he personally witnessed I-S- verbally abusing the petitioner.

In her undated letter, stated that she met the petitioner in the fall of 2007, and that she knows that the petitioner had a difficult experience with I-S-, due mostly to financial matters and I-S-'s extramarital affair. She did not indicate that she personally witnessed any incidents of abuse.

In his January 3, 2009 letter, , who works for the petitioner's employer, states that the petitioner's job performance declined dramatically in March 2007, as a result of I-S-'s abuse.

The petitioner also submitted evidence that he purchased Citalopram, an anti-depressant, on October 24, 2008, and November 24, 2008.

The director found the petitioner's submissions insufficient to establish that he had been subjected to battery or extreme cruelty, and denied the petition on February 24, 2009. The director noted that although the behavior of I-S- as described in the record of proceeding was unpleasant, it did not rise to the level of battery or extreme cruelty as those terms are defined in the regulations. Rather, testimony of record with regard to her behavior was indicative of marital discord, and appeared to have been associated with events stemming from a deteriorating marriage. The director stated that the intent of Congress in creating the visa classification at

issue in this case was not to encompass the mental anguish often associated with marital difficulties, infidelity, abandonment, or separation.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition. The testimony of is of little evidentiary value, as it does not appear as though she knew the petitioner at the time the alleged abuse occurred. Her knowledge of the alleged abuse is, therefore, unclear. It appears as though her testimony is based upon the petitioner's description of events to her.

Nor does the testimony of establish that the petitioner was subjected to battery or extreme cruelty, as his testimony is insufficiently vague, generalized and lacking in details. For example, while states that he witnessed I-S- verbally abusing the petitioner, he does not indicate what she said, or the context in which she said it. He describes no specific instances of abuse.

Nor does the testimony of establish that the petitioner was subjected to battery or extreme cruelty, as his testimony is also vague, generalized and lacking in details. As was the case with the testimony of fails to discuss, in probative detail, any specific instances of the alleged abuse.

Nor does the psychological evaluation from establish that the petitioner was subjected to battery or extreme cruelty. First, although the input of any mental health professional is respected and valuable, the AAO notes that letter was based upon one interview with the petitioner. Therefore, the conclusions reached in the submitted 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 s findings speculative and diminishing the evidentiary weight of his letter.

Nor do counsel's assertions on appeal establish the petitioner's claim. Counsel's argument on appeal consists primarily of his generalized assertions that the director incorrectly analyzed the evidence of record. However, no new evidence or testimony was submitted. Although counsel states that the director erred in failing to consider the language contained in the couple's divorce decree, the AAO notes that that divorce decree was never submitted into the record.

Finally, the AAO turns to the testimony of the petitioner. The petitioner's claim of abuse consists primarily of I-S-'s unkind behavior after his automobile accident, her extramarital affair, her lack of appreciation for his payment of her debts, and her withdrawal of funds from their joint bank account. While such conduct may have been unkind and inconsiderate, it does 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 I-S-'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. As noted by the court in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." The petitioner has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. He has failed to establish that I-S- 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 agrees with the director's determination that the petitioner has failed to establish that I-S subjected him to battery or extreme cruelty. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.