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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

By

FILE:

[REDACTED]
EAC 06 252 52162

Office: VERMONT SERVICE CENTER

Date:

MAR 05 2009

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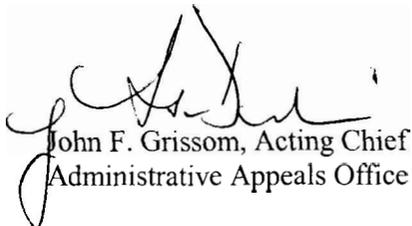
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 submitted a timely appeal on September 7, 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 (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.

* * *

- (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 record of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Nigeria who entered the United States in B-1/B-2 status on July 16, 2002. He married A-R-,¹ a citizen of the United States, on September 14, 2004. A-R- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on March 11, 2005. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. The Forms I-130 and I-485 were denied on May 12, 2006, after the petitioner failed to appear for a scheduled interview.

The petitioner filed the instant Form I-360 on September 7, 2006. On September 14, 2006, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner is a person of good moral character, and that the petitioner married A-R- in good faith.

¹ Name withheld to protect individual's identity.

Counsel responded to the director's request on November 13, 2006, and submitted additional documentation.

The director issued a notice of intent to deny (NOID) the petition on March 29, 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-R-. Counsel responded on May 25, 2007 and submitted additional evidence.

After considering the evidence of record, the director denied the petition on August 10, 2007.

Battery or Extreme Cruelty

The sole issue on appeal is whether the petitioner has established that he was the victim of battery and/or extreme cruelty perpetrated by A-R-. In support of his assertion that he was the victim of battery and/or extreme cruelty, the petitioner submits several affidavits.

In his May 21, 2007 affidavit, the petitioner states that A-R- "tried to control me through repeated psychological attacks on me, which included emotional abuse, humiliation, degradation, and isolation." According to the petitioner, the abuse began one month after the wedding: the petitioner stated, again, that A-R- attempted to control him through vicious psychological attacks, which resulted in emotional abuse, humiliation, degradation, and isolation. The petitioner stated that A-R- smoked marijuana and drank alcohol in their home and, when he complained about the smoke, A-R- called him names. A similar incident occurred the following month. A few months later, A-R- and her friends were again smoking marijuana and drinking alcohol in the house. After A-R-'s friends left, the petitioner told A-R- he did not agree with what they were doing. In response, A-R- slapped him, yelled at him, and told him that he could leave. The petitioner described another incident in which he and A-R- had a disagreement over which night of the week to "go out." According to the petitioner, A-R- became extremely angry, and told him that if he went out on a different night than the night she wanted, she would lock him out of the house. On another occasion, the couple had plans to eat out for dinner. A-R- suggested they bring some of her friends, and the petitioner stated that they could not afford to spend money on her friends. According to the petitioner, A-R- became very rude and angry, cursed at him, and refused to go out to eat with him. The petitioner stated that he was afraid to go out without her, as he feared she would lock him out of the house. The petitioner described another incident in which he jokingly asked A-R- if one of her friends was his boyfriend. The petitioner said that A-R- became angry and told the petitioner he was asking stupid questions. The petitioner left the house and, when he came home later that evening, the house was locked, forcing him to spend the night at a friend's house. On another occasion, A-R- grabbed the telephone from the petitioner, and told the caller to stop calling the house, and to leave them alone. The petitioner also described an incident in which he caught A-R- kissing another man in a car. When the petitioner asked A-R- who the man was, she told him it was none of his business. The petitioner stated that his friends were afraid to call the house, because when A-R- answered the phone she would call them names and tell them to stop calling the house. As such, they did not want to come visit him; they could only come to see him when A-R was spending time with her

friends. Further, if he tried to leave, A-R- told him that she would lock him outside the house. The petitioner reported that, as a result of his marital situation, he became depressed.

In his May 21, 2007 affidavit, [REDACTED] a friend of the petitioner, stated that he noticed a change in the petitioner's behavior within a month of the marriage. He states that, in his opinion, the petitioner was "abused, humiliated, and degraded by his wife who attempted to control him." [REDACTED] said that the petitioner seemed depressed, and that he often saw tears in the petitioner's eyes. He stated that when he was able to see what was occurring in the couple's marriage, he saw that A-R- had become extremely aggressive and controlling; that she was bossy; and that she was rude and aggressive. Mr. [REDACTED] stated that he felt sorry for the petitioner, as he was truly in love with A-R-.

In her November 10, 2006 affidavit, [REDACTED], a friend of the petitioner, stated that, in her opinion, A-R-'s drug and alcohol abuse was the root cause of the marital breakup. Ms. [REDACTED] said that she observed A-R- drinking alcohol when she and her husband visited the petitioner and A-R- at their home and went to restaurants together, and that she saw A-R- treat the petitioner in an abusive manner after consuming alcohol. Ms. [REDACTED] stated that she confronted A-R- about her treatment of the petitioner, but that A-R- became belligerent.

The record also contains a psychological evaluation from [REDACTED]. In her February 8, 2006 report, which was based upon an interview that occurred on January 16, 2006, [REDACTED] states, with regard to battery and/or extreme cruelty, that the petitioner told her that A-R- was verbally abusive, and that A-R- wanted more and more money from the petitioner, and that A-R- left the petitioner when he did not give her money. Dr. [REDACTED] states that the petitioner told her that A-R- was never violent, and that he is thankful there was no physical abuse in the marriage. Dr. [REDACTED] diagnoses the petitioner with post-traumatic stress disorder (PTSD).

In his August 10, 2007 denial, the director found the petitioner's submissions insufficient to establish that he had been subjected to battery and/or extreme cruelty by A-R-. According to the director, the extreme cruelty standard set forth in the regulation does not encompass the mental anguish that is generally associated with marital difficulties and incompatibilities.

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 the victim of battery and/or extreme cruelty perpetrated by A-R-. First, the record fails to establish that the petitioner was subjected to battery. Although the petitioner stated in his affidavit that A-R- slapped him on one occasion, he expressed to [REDACTED] his thankfulness that he was never physically abused. With regard to extreme cruelty, the evidence of record does not establish that A-R-'s actions were coercive, threatened harm, or were aimed at dominance or control over the petitioner.

While conflicts over the use of alcohol and illegal drugs undermine the strength of a marriage, they do not establish extreme cruelty. Nor do disagreements over which nights to go out to eat, or whether friends should accompany a couple out to eat, rise to the level of extreme cruelty.

Although the petitioner states that he was afraid to leave the house because he feared A-R- would lock him out of the house, it is unclear to the AAO why, if the marriage was bona fide, the petitioner did not have a key to get into his own home. Further, the petitioner's affidavit indicated that he was locked out of the home on only one occasion. Nor is it clear to the AAO how A-R- would have been able to lock the petitioner inside the home. While perhaps unkind and cruel, A-R-'s behavior in a car with another man does not rise to the level of extreme cruelty.

Nor does [redacted] evaluation establish that the petitioner was subjected to battery and/or extreme cruelty. First, the AAO notes that [redacted] testimony is based upon one interview of unspecified length, and her evaluation appears to have been procured by the petitioner for the sole purpose of bolstering the instant immigrant petition. Although the AAO does not question the qualifications of [redacted], and while the input of any mental health professional is respected and valuable, the record fails to reflect an ongoing relationship between the petitioner and [redacted]. [redacted] conclusions reached in the submitted evaluation, being based upon a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering her findings speculative and diminishing the evaluation's value. Moreover, the AAO notes that the record fails to reflect any history of treatment for the PTSD that [redacted] diagnosed in her single interview with the petitioner. Further, [redacted] testimony introduces an inconsistency into the record: [redacted] states that the petitioner told her that A-R- "wanted more and more money from him and eventually left when he did not give her money." The petitioner, however, made no such assertion. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). For all of these reasons, the AAO will accord little weight to [redacted] evaluation.

While A-R-'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 and the letters submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that A-R-'s non-physical behavior was accompanied by 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 agrees with the director's determination that the petitioner has failed to establish that his wife 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.



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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.