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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

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FILE: [REDACTED]
EAC 04 259 53247

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [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:

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.

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 immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (“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 because the petitioner did not establish that he entered into marriage with his U.S. citizen wife in good faith and that she battered or subjected him or any of his children to extreme cruelty during their marriage.

On appeal, the petitioner submits additional evidence and copies of documents previously filed.

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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 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.

* * *

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Peru who entered the United States on April 6, 1999 as a nonimmigrant visitor.

On September 1, 1999, the petitioner married P-B-¹, a U.S. citizen, in New Jersey.² P-B- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on February 11, 2002. The petitioner and P-B- were divorced on February 28, 2005.³

The petitioner filed this Form I-360 on September 16, 2004. On September 23, 2004 and again on June 16, 2005, the director issued Requests for Evidence (RFE) of, *inter alia*, the petitioner's entry into the marriage in good faith and the requisite battery or extreme cruelty. On October 27, 2005, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good faith in entering the marriage and battery or extreme cruelty. The petitioner responded to the RFEs and the NOID with additional evidence, which the director found insufficient to establish his eligibility. The director denied the petition on the grounds cited in the NOID on July 28, 2006 and the petitioner timely appealed.

On appeal, the petitioner reiterates his claims that he married his former wife in good faith, but she became abusive and violent. The petitioner's claims and the evidence submitted on appeal do not overcome the grounds for denial. We affirm the director's decision and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with his former wife in good faith:

- The petitioner's August 10 and December 16, 2005 affidavits;
- Affidavit of the petitioner's daughter, [REDACTED];
- Affidavit of the petitioner's former landlord, [REDACTED];
- Copies of the joint federal and New Jersey income tax returns of the petitioner and his former wife for 2000 and 2001 and documentation from the Internal Revenue Service (IRS) that the petitioner and his former wife jointly filed a 1999 federal income tax return and evidence that they jointly filed a 2001 New Jersey income tax return;
- Copies of joint bank account statements, letters and cancelled checks from the three joint accounts of the petitioner and his former wife;
Copies of joint residential leases and rent receipts; and
- Copies of correspondence individually addressed to the petitioner and his former wife;

¹ Name withheld to protect individual's identity.

² The record shows that the petitioner has been married two times. In this decision, we will refer to P-B- as the petitioner's "former spouse."

³ Middlesex County, Superior Court of New Jersey, Chancery Division, Family Part, Docket Number [REDACTED]

- Notes of the January 3, 2002 interview of the petitioner and his former wife regarding her Form I-130 petition filed on his behalf;
- Photographs of the petitioner and his former wife at their wedding and on other, unspecified occasions with the petitioner's children and other unidentified individuals.

In his first affidavit, the petitioner did not discuss his intentions in marrying his former wife. In his second affidavit, the petitioner asserts that the director ignored or summarily disposed of the relevant evidence that he previously submitted. Again, the petitioner did not provide any probative details regarding how he met his former wife, their courtship, wedding, shared residence and experiences, apart from the alleged abuse. The petitioner's mere assertion that he married his former wife in good faith is not sufficient to establish his claim.

The affidavits of the petitioner's daughter and former landlord also do not provide probative, detailed information sufficient to demonstrate the petitioner's good faith in marrying his former wife. The petitioner's daughter, [REDACTED], briefly states that she and her younger brothers lived with the petitioner and his former wife. She reports that "[a]t the beginning, things seemed to be normal and we all got along fine with . . . my step mother." The petitioner's daughter does not describe the family's joint residence, shared experiences or her observations of her father's relationship with his former wife in any detail. The petitioner's former landlord states that the petitioner and his former wife rented an apartment from her where they lived for two years. Ms. [REDACTED] briefly notes that the petitioner and his former wife "seemed to have a husband-wife relationship" and that she observed them going out to shop, but she provides no further, detailed and relevant information.

The relevant documentation shows that the petitioner and his former wife jointly filed a 1999 federal income tax return and a 2001 New Jersey income tax return. The petitioner did not submit evidence that the former couple's 2000 and 2001 federal income tax returns were actually filed, as the director noted in the NOID. On appeal, the petitioner asserts that he is submitting evidence of "joint income tax (IRS print out 1997-1998-1999), but the petitioner is mistaken. The IRS printouts and transcript submitted on appeal show that the filing status of the petitioner's former wife was single on her 1997 and 1998 income tax returns. The transcript also shows that the petitioner filed his 2003 income tax return as head of household. While the evidence submitted on appeal confirms that the former couple jointly filed a 1999 federal income tax return, it provides no further evidence of shared tax liability.

The documentation of the former couple's joint bank accounts is equivocal. The record contains three statements for the former couple's joint account at United Roosevelt Savings Bank that are dated between March 16 and May 18, 2000. The statements reflect one opening deposit in March and one additional deposit in April, but no other deposits or withdrawals. The petitioner submitted a photocopy of a check drawn on this account, dated June 2, 2000, which is signed by him and notes the account number of the former couple's IRS account number for the balance on their 1999 return. On appeal, the petitioner submits copies of two cancelled checks drawn on this account, which are dated June 25 and 27, 2000 and signed by his former wife, and copies of two deposit tickets dated July 27 and December 8, 2000. In sum, the record documents just seven transactions made on the United Roosevelt

account over the course of ten months and does not reflect regular or frequent use of the account by the petitioner and his former wife.

The evidence of the former couple's First Union National (later Wachovia) Bank shows that they opened a joint savings account on November 20, 2000 and a joint checking account on March 2, 2001. The record contains statements of the checking account dated between July 13, 2001 and November 12, 2002, which reflect closing balances between \$4.67 and \$364.18. The statements show limited activity on the account during this time and the petitioner submitted no cancelled checks or other evidence that both he and his former wife used the account. For example, the activity on the account indicates no check or withdrawal of \$550 or \$650, the amount of the former couple's rent reflected on their rent receipts.

The petitioner also submitted an October 15, 2004 letter from Wachovia Bank confirming the existence of the joint checking account with a balance of \$20.00. As the petitioner states that he and his former wife separated in June 2002, the 2004 Wachovia letter is of no probative value. The record contains no statements or other evidence of the use of the joint savings account.

The remaining, relevant evidence also fails to demonstrate that the petitioner married his former wife in good faith. The leases, rent receipts and correspondence show that the petitioner and his former wife resided together in the past. That evidence does not, however, demonstrate the petitioner's intentions in entering their marriage. The correspondence is addressed to the petitioner and his former wife individually and does not reflect that the petitioner and his former wife shared financial accounts (apart from the bank statements and IRS account), assets and liabilities or other significant, marital responsibilities. The photographs picture the petitioner and his former wife at their wedding and on other, unspecified occasions, but the photographs alone do not establish the petitioner's good faith in entering the marriage.

The notes of the former couple's 2002 interview show that the petitioner did not know significant facts about his former wife such as the number of her siblings, her favorite color and her level of education. In addition the petitioner and his former wife gave different accounts of their supposedly joint activities on Christmas, New Year's Eve and New Years Day.

The relevant evidence shows that the petitioner and his former wife filed two joint income tax returns, resided together and opened three joint bank accounts during their four-year marriage. Yet, the record does not demonstrate that both the petitioner and his former wife used the bank accounts or that either one of them used the bank accounts to pay rent or other significant living expenses. The petitioner also failed to describe how he met his former wife, their courtship, wedding, shared residence and experiences in any detail. Moreover, the record of the 2002 interview shows that he was unaware of significant facts about his former wife after three and a half years of marriage. The preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that his former wife subjected him and his younger children to battery and extreme cruelty during their marriage:

- The petitioner's August 10 and December 16, 2005 affidavits;
- Affidavit of the petitioner's daughter, [REDACTED];
- Affidavits of the petitioner's friends, [REDACTED] and [REDACTED];
- Affidavit of the petitioner's former landlord, [REDACTED];
- June 21, 2004 temporary restraining order issued against the petitioner's former wife and July 1, 2004 extension of the temporary restraining order;⁴
- April 23, 2004 divorce complaint of the petitioner and the default divorce judgment filed on February 28, 2005;
- August 4, 2005 letter addressed to the petitioner from the New Jersey Victims of Crime Compensation Board confirming receipt of the petitioner's claim for benefits;
- Psychological evaluations of the petitioner and his children, [REDACTED] and [REDACTED] by [REDACTED] [REDACTED] dated in July 2005 and submitted in response to the second RFE; and
- April 1, 2006 letter of [REDACTED] submitted in response to the NOID.

In his first affidavit, the petitioner stated that his former wife once physically attacked him in public near a supermarket after their separation and demanded that he support her. The petitioner states that the police came and told him how to file for a restraining order, but they did not make a report. The petitioner also reported that his former wife was overbearing, demanding, loud and threatening. He stated that she "mentally chastise[d]" him and his children and further mistreated and harassed his children. The petitioner did not describe any particular incident of abuse in probative detail.

In his second affidavit, the petitioner reasserted that the judge in his divorce case found that his former wife subjected him to extreme cruelty and the court's judgment is binding on USCIS. The petitioner is misguided. The judgment of divorce states that the petitioner's marriage was "dissolved pursuant to N.J.S.A. 2A:34-2(d)." That section of the New Jersey Statutes prescribes that a divorce may be granted on the ground of separation for at least 18 months with no reasonable prospect of reconciliation. N.J. Stat. Ann. § 2A:34-2(d) (West 2009). Contrary to the petitioner's assertion, the court did not grant his divorce on the ground of his former wife's extreme cruelty. Extreme cruelty is a separate ground for divorce found at section 2A: 34-2(c) of the New Jersey Statutes. *Id.* at § 2A:34-2(c). Although in his divorce complaint, the petitioner claimed that his former wife subjected him to extreme cruelty and physically abused him, the court did not grant the divorce on the ground of extreme cruelty.

⁴ Middlesex County, Superior Court of New Jersey, Family Division, Docket Number [REDACTED]

Even if the court had ordered the marriage dissolved on the ground of extreme cruelty, that order would not be binding on the determination of battery or extreme cruelty in these proceedings. Extreme cruelty as a ground for divorce is defined in the New Jersey Statutes as “any physical or mental cruelty which endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant.” *Id.* This definition differs significantly from the description of the term battery or extreme cruelty in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In addition, a state court’s ruling on the dissolution of an alien’s marriage may be relevant, but is never binding on U.S. Citizenship and Immigration Services (USCIS) determination of the alien’s eligibility for immigrant classification under section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The statements of the petitioner’s daughter, former landlord and friends do not provide detailed, probative information sufficient to establish the requisite battery or extreme cruelty. The petitioner’s daughter states that the petitioner’s former wife became very argumentative, demanding and hysterical when the petitioner was unable to give her money. The petitioner’s daughter further states that his former wife was very impatient with her youngest brother and expected the petitioner’s daughter to care for him. The petitioner’s daughter states that she did not witness the incident at the grocery store, but confirms that when her father returned his clothes were ripped and he was very upset. The petitioner’s daughter does not describe any incident of abuse in probative detail.

The petitioner’s former landlord, [REDACTED], states that the petitioner and his former wife had “a very stormy relationship” and that on one occasion, his former wife got very violent and told the petitioner to leave. Ms. [REDACTED] does not describe how the petitioner’s former wife became violent and provides no further details of that incident or any other instances of abuse. Mr. [REDACTED] states that the petitioner’s daughter called him after the incident at the grocery store in 2004 and asked him to help. Mr. [REDACTED] reports that when he arrived at the grocery store, the petitioner’s pants were torn and the police were advising the petitioner’s former wife that she could be charged with a crime. Mr. [REDACTED] does not further describe this incident. He states that the petitioner confided that he “was not happy with his marriage situation,” but he does not describe any abuse or provide any further, relevant information. Mr. [REDACTED] states that he was present during the 2004 incident and saw the petitioner’s former wife pull on his clothes, hit him and rip his pants and shirt. Mr. [REDACTED] notes that the police arrived and pulled the petitioner’s former wife away from him and then advised the petitioner on how to obtain a restraining order.

The psychological evaluations of the petitioner and his sons are of little probative value. The evaluations are dated in July 2005, over three years after the petitioner stated that he had separated from his wife, and after the June 16, 2005 RFE was issued requesting further evidence of battery or extreme cruelty. Ms. [REDACTED] diagnoses the petitioner and his sons with posttraumatic stress disorder and generalized anxiety related to domestic violence. Ms. [REDACTED] states that the petitioner reported that his former wife twice attacked him after their separation and that he and his sons stated that both children witnessed the attack in 2004 in front of the grocery store. In her April 1, 2006 letter, Ms. [REDACTED] states that she continues to provide psychological treatment to the petitioner and his sons through weekly sessions. Ms. [REDACTED] rendition of the alleged abuse is inconsistent with the

petitioner's statements in his affidavits and his divorce complaint. The petitioner only discusses the 2004 attack of his former wife and does not mention the 2002 attack cited by [REDACTED]. The petitioner also asserts that his former wife threatened and harassed him and his children, but [REDACTED] does not discuss these forms of abuse in her evaluations of the petitioner and his sons.

The temporary restraining order and its continuance also do not establish the petitioner's claim. The June 21, 2004 order states that the petitioner reported that his former wife confronted him in front of a grocery store, demanded that the petitioner give her his driver's license and social security card, ripped the petitioner's pants in an effort to grab his wallet and said she was going to call her brother to come and beat up the petitioner. The order was granted ex parte. On July 1, 2004, the court extended the order because the petitioner's former wife had not been served. The second order does not state its duration or reference a future hearing and the petitioner submitted no evidence that he ever obtained a final order.

Finally, the letter from the Victims of Crime Compensation Board shows that the petitioner submitted a claim for benefits to the Board, but the letter does not state the basis for the claim or otherwise indicate that it is related to the abuse by the petitioner's former wife.

In his affidavits, the petitioner recounts the court proceedings in his temporary restraining order and divorce cases. He briefly states that his former wife once attacked him in public and was demanding, threatening and harassed him and his children. The petitioner does not, however, describe any incident of abuse in probative detail. The statements of the petitioner's daughter, former landlord and friends also lack substantive details. Ms. [REDACTED]'s evaluations of the petitioner and his sons are of little probative value as they were conducted after the second RFE was issued and are inconsistent with the petitioner's statements. The temporary restraining orders were granted ex parte and the petitioner submitted no evidence that a final order was ever issued. Accordingly, the preponderance of the relevant evidence does not demonstrate that the petitioner's 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 petitioner has not demonstrated that he entered into marriage with his former wife in good faith and that she battered or subjected him or any of his children to extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.