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

U.S. Citizenship and Immigration Services

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 17 2009
EAC 06 121 51713

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:

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).

hn 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 his former wife battered or subjected him to extreme cruelty during their marriage.

On appeal, counsel submits a brief and additional evidence.

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.

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 –*
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> (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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of India who states on the Form I-360 that he entered the United States on September 18, 1996. On April 26, 2001, the petitioner married R-C-[1], a U.S. citizen, in New York. R-C- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which she later withdrew. R-C- filed a second Form I-130 petition on the petitioner's behalf, which was approved on May 5, 2005.

The petitioner filed this Form I-360 on March 17, 2006. On January 26, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite battery or extreme cruelty. The petitioner responded with additional evidence, which the director found insufficient to establish his eligibility. The director denied the petition on the ground cited in the NOID on April 26, 2007 and counsel timely appealed.

On appeal, counsel submits a copy of the petitioner's divorce judgment and asserts that the director did not apply the appropriate standard of proof and overlooked credible evidence submitted below. Counsel's claims and the evidence submitted on appeal fail to establish that the petitioner's former wife subjected him to battery or extreme cruelty during their marriage.

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

Battery or Extreme Cruelty

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

- The petitioner's March 8, 2006 affidavit;
- Affidavits of the petitioner's mother-in-law, cousin, and two friends;
- Psychosocial report of the petitioner by , submitted in response to the NOID; and
- Copy of the judgment and findings of fact in the petitioner's divorce case.[2]

In his affidavit, the petitioner states that on February 10, 2003, his former wife pushed and cursed him when he asked her to end a party after he came home late from work and was sick. The petitioner also reports that his former wife hit, pushed and cursed him when she was in a bad mood on March 10, 2003. The petitioner recounts that his former wife verbally abused him in public on April 4 and again in July 2004. In December 2004, the petitioner states that his former wife abused him with "her horrible language" when he forgot to remind her that it was his birthday. The petitioner explains that his former wife was "highly objectionable" when she spoke to his family members on the telephone and that she threatened to teach him a lesson and subsequently withdrew her Form I-130 petition filed on his behalf.

The petitioner explains that he and his former wife reconciled and she filed a second Form I-130 petition for him in March 2005. Nonetheless, the petitioner reports that his former wife lied to extort money from him, stole money from his pockets and threatened to get him deported. The petitioner also recounts that his former wife started drinking and smoking and on June 6, 2005, he found her kissing her old boy friend. Although the petitioner states that his wife physically abused him on two occasions, he does not describe her battery in probative detail. The petitioner also does not describe his former wife's financial extortion or verbal abuse in detail. The petitioner's testimony is insufficient to establish the requisite battery or extreme cruelty.

The statements of the petitioner's friends also fail to establish his claim. The petitioner's mother-in-law stated that her daughter was often disrespectful to the petitioner, which embarrassed the petitioner and his mother-in-law. She further asserted that she knew that her daughter's "irresponsible and disrespectful attitude started creating tension between both [the petitioner and his former wife], which constantly escalated in the weeks and months ahead." The petitioner's mother-in-law does not describe any incident of physical or psychological abuse that she witnessed in detail and she provides no further, relevant information.

The petitioner's cousin, , states that the petitioner's wife was "a very disrespectful woman with no manners" and that he often saw her "obnoxiously cursing" the petitioner in front of himself and others. Mr. confirms that the petitioner often asked him to mediate during their

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[2] Queens County, New York Supreme Court, Index Number

marital conflicts and he asserts that the petitioner's wife was always at fault. Mr. also notes that the petitioner's life was "extremely disturbed" when he found out that his former wife was having an extramarital affair with her old boyfriend. Mr. does not describe in probative detail any of the occasions where he mediated conflicts between the former couple or when the petitioner's former wife cursed the petitioner.

The petitioner's friend, , states that the petitioner's wife "was clearly immature and extremely irresponsible. Her attitude was always very unreasonable and she often abusive in language [sic]. She [sic] personal habits of excessive drinking and smoking also added fuel to the fire." Mr. does not indicate that he witnessed any abuse and he does not otherwise explain the basis for his assessment of the behavior of the petitioner's former wife. The petitioner's other friend, states that he knew the petitioner experienced "serious issues" that he was "very uncomfortable with" after his marriage because observed that the petitioner was dejected and depressed. Mr. explains that the petitioner eventually confided in him regarding his former wife's "unreasonable activities." Mr. states that on a few occasions, he observed that the petitioner's former wife "had no respect left for him and she was rude not only to him but also to his friends." Mr. does not indicate that the petitioner's former wife physically or psychologically abused the petitioner and he provides no further, relevant information.

report also fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. Mr. s assessment is based on a single interview of unspecified length conducted on February 8, 2007, after the NOID was issued and a year and a half after the petitioner states that he and his former wife separated. Mr. states that the petitioner was referred by his attorney to obtain a psychosocial report "for immigration purposes." Mr. recounts several, significant actions of the petitioner's former wife that the petitioner himself does not mention. states that the petitioner's former wife would often slap him, throw objects at him, break objects in their home and force the petitioner to sleep on the couch or the floor. Mr. further asserts that the petitioner's former wife once threatened him with a kitchen knife and a baseball bat. repeatedly discusses the drug use of the petitioner's former wife and states that she took the petitioner's mail and personal documents and monitored his telephone calls. Mr. further states that the petitioner's wife had an abortion during their marriage, but was also impregnated by her old boyfriend during the marriage and gave birth to that child. In his own affidavit, the petitioner does not discuss any of these actions and behavior of his former wife. This inconsistency detracts from the probative value of statements.

diagnoses the petitioner with a "history" of post traumatic stress disorder and major depressive disorder, but states that the petitioner "admits that his mood is now much better given the physical and emotional distance from [his former wife]." Mr. does not indicate that he recommended any physical or mental health treatment for the petitioner or that the petitioner was treated for any mental health conditions in the past. Mr. s report is of little probative value because it was conducted over a year and a half after the petitioner separated from his wife, is based on

a single interview initiated and completed after issuance of the NOID, and because the report is inconsistent with the petitioner's own description of the alleged abuse.

The findings of fact in the petitioner's divorce case state that the petitioner proved that his former wife pushed, slapped and cursed him on February 10 and March 10, 2003; that she abused and cursed the petitioner on April 4, 2004 and that she abused, slapped and cursed him again on December 6, 2004. In his affidavit, the petitioner states that his former wife verbally abused him on December 6, 2004, but he does not indicate that she slapped or otherwise physically abused him on that date.

Regardless of that discrepancy, the court's findings of fact are of little probative value because the judgment states that the petitioner's former wife did not appear in court and did not file any counter-claims, hence, the divorce was granted in default. Accordingly, the default judgment was based entirely upon the petitioner's own assertions.

On appeal, counsel describes various forms of extreme cruelty such as lying, social isolation, controlling behavior, possessiveness, harassment, threats, economic abuse, degradation and immigration related abuse. Counsel fails, however, to explain or even discuss how the behavior and actions of the petitioner's former wife constituted any of those forms of extreme cruelty.

On appeal, counsel also asserts that the director did not apply the "any credible evidence standard" of proof. Counsel conflates the evidentiary standard prescribed by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. The statute mandates that U.S. Citizenship and Immigration Services (USCIS) "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This provision prescribes an evidentiary standard. *See* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). This evidentiary standard is not equivalent to the petitioner's burden of proof in this case, which, as in all visa petition proceedings, is the preponderance of the evidence. *In re Cabrera*, 21 I&N Dec. 589 (BIA 1996); *Matter of Patel,* 19 I&N Dec. 774 (BIA 1988); *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). In the NOID and his decision, the director addressed the relevant evidence and explained the insufficiency of that evidence to establish the petitioner's eligibility. We find no error in the director's decision.

Conclusion

The petitioner has not demonstrated that his former wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.