



U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date:

MAR 23 2009

EAC 04 145 50759

IN RE:



PETITION: Petition for Special 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)

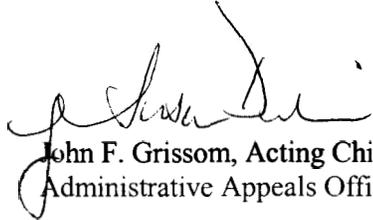
ON BEHALF OF PETITIONER:



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 Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

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 petitioner filed the instant Form I-360 on April 13, 2004. The director denied the petition on July 13, 2005 on the basis of his determination that the petitioner had failed to establish that he had been subjected to battery and/or extreme cruelty by I-P-,¹ his United States citizen wife. The petitioner appealed the director's decision to the AAO. In its July 3, 2006 decision, the AAO agreed with the director's analysis. However, although the AAO agreed with the director's reasoning, it remanded the petition to the director, on technical grounds, for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).²

The director issued the requisite NOID on November 16, 2006. Counsel responded to the director's NOID on January 11, 2007, and submitted additional evidence. The director denied the petition on October 15, 2007, and certified his decision to the AAO for review. In his denial, the director found that the petitioner had again failed to establish that I-P- had subjected him to battery and/or extreme cruelty. Counsel submitted a supplemental brief and additional evidence on November 14, 2007.

The sole issue on certification is whether the petitioner has established that he was subjected to battery and/or extreme cruelty by I-P-. As the AAO found the evidence of record insufficient to establish that I-P- subjected the petitioner to battery and/or extreme cruelty in its July 3, 2006 decision, on certification the AAO will only consider the evidence submitted by the petitioner after its issuance of that decision. The following evidence in support of the petitioner's assertion that he was subjected to battery and/or extreme cruelty by I-P- has been submitted into the record since the AAO's July 3, 2006 decision:

- Counsel's January 8, 2007 response to the director's NOID;
- A letter from [REDACTED] the petitioner's employer, dated January 5, 2007;
- A second letter from [REDACTED], dated November 8, 2007 (the AAO notes that the language of this letter is identical to that of [REDACTED]'s first letter);
- A letter from [REDACTED], a "therapist trainee," dated January 2, 2007;

¹ Name withheld to protect individual's identity.

² On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

- A second letter from [REDACTED], dated November 1, 2007 (the AAO notes that the language of this letter is identical to that of [REDACTED] first letter);
A letter from the petitioner, dated January 8, 2007; and
- Counsel's brief.

Upon review, the AAO agrees with the director's determination that the petitioner has failed to establish that he was subjected to battery and/or extreme cruelty by I-P-. In its July 3, 2006 decision, the AAO agreed with the analysis of the director's earlier July 13, 2005 decision. In particular, the AAO noted that the petitioner's description of events fails to establish battery and/or extreme cruelty. The AAO also found, further, that the petitioner had failed to explain why he failed to submit evidence that he called the police, sought an order of protection, or took other legal steps to end the alleged abuse; that he sought shelter from the alleged abuse; that he sought assistance from clergy or social service agencies; or that he ever sought medical or psychological treatment for the effects of the alleged abuse. The contents of the AAO's decision, as well as the evidence of record upon which the AAO based its decision, are part of the record and their contents need not be repeated.

As noted previously, the director issued the NOID, as directed by the AAO, on November 16, 2006. In response, counsel asserted that the affidavit that the petitioner had submitted on June 7, 2004 confirms the abuse suffered by the petitioner. However, that affidavit has already been deemed by both the director and the AAO insufficient to establish that the petitioner was subjected to battery and/or extreme cruelty. The AAO will not address this affidavit again.

Counsel also submitted letters from [REDACTED] and [REDACTED] in response to the director's NOID. In his January 5, 2007 letter, [REDACTED] states that the petitioner's behavior has changed; that the petitioner is always depressed; that the petitioner fails to concentrate on his work; that the petitioner asks permission to leave work early; and that the petitioner has become a different person. According to [REDACTED], when he asked the petitioner about these changes, the petitioner told him that they were due to his problems with I-P-.

In her January 2, 2007 letter, [REDACTED] states that the petitioner attended psychotherapy sessions from July 28, 2006 through October 27, 2006. She states that the petitioner began therapy due to symptoms of depression, anxiety, and stress.

Neither the letter from [REDACTED] nor the letter from [REDACTED] establishes that the petitioner was subjected to battery and/or extreme cruelty. Mr. [REDACTED] letter is insufficiently vague and general. He offers no information such as when the changes in the petitioner's behavior began; how long he knew the petitioner before the changes in his behavior began; how long the new behaviors lasted; or whether the behaviors have been successfully overcome, etc. The lack of any specific information such as dates, or specific examples of the petitioner's failure to concentrate on his work, undermines the value of his testimony.

Nor does [REDACTED] letter establish that the petitioner was subjected to battery and/or extreme cruelty. First, the AAO questions [REDACTED]'s qualifications to opine on the matter of the petitioner's mental health, as no evidence regarding her qualifications has been submitted, other than her unexplained statement that she is a "therapist trainee." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the AAO notes that Ms. [REDACTED]'s letter, which consists of seven sentences, is extremely general in nature, and [REDACTED] does not describe any of the alleged abuse, nor does she indicate whether she discussed the alleged abuse with the petitioner. Rather, she indicates that she discussed with the petitioner his feelings of depression, anxiety, stress, insecurity, fear, inability to trust, and despair. Ms. [REDACTED] states simply that such feelings arose from the petitioner's "experiences" in his marriage. She does not diagnose the underlying trauma or provide any information or insight to indicate that I-P- was a causative or contributing factor in the petitioner's mental health conditions. Nor does [REDACTED] indicate whether she prescribed or recommended any treatment for the petitioner's mental health conditions. Moreover, the AAO notes that the petitioner only began seeking therapy after the AAO issued its decision, in which it questioned why the petitioner had submitted no evidence that he had ever sought such treatment. As the petitioner never sought therapy until the AAO questioned the matter, it appears that he may have sought such therapy for the purpose of bolstering his immigrant petition. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). All of these factors diminish the evidentiary weight that the AAO will accord [REDACTED] testimony.

Nor does the additional letter from the petitioner that counsel submitted in response to the NOID establish the requisite battery and/or extreme hardship. In his January 8, 2007 letter, the petitioner fails to offer additional details regarding the alleged abuse and/or extreme cruelty. Rather, the petitioner states in his letter that he did not call the police because he did not think they would believe him; and that he did not seek out counseling because he thought his feelings of depression would pass. He also states that he is devastated at the outcome of his marriage to I-P-, as he never thought the relationship would turn out the way it did. This letter fails to offer additional details regarding the alleged abuse and/or extreme cruelty. Although the AAO acknowledges that the petitioner did seek out professional help, the AAO questions the timing of that help, as set forth previously.

The director found counsel's submission unconvincing, denied the petition on October 15, 2007, and certified his denial to the AAO for review. In his decision, the director stated that the intent of the statute is not encompass the mental anguish generally associated with marital difficulties or abandonment, and that marital tensions and incompatibilities which serve to place severe strain on a marriage, and in fact may be the root of the marriage's disintegration, do not, in and of themselves, constitute extreme cruelty.

On certification, counsel submits a brief and additional letters from [REDACTED] and [REDACTED]. However, the letters from [REDACTED] and [REDACTED] are of no probative value, as they offer no additional information: both authors simply repeat, verbatim, their earlier letters.

The “argument” portion of counsel’s brief is broken into two sections. In the first section, counsel argues that the director should have considered the petitioner’s first affidavits and the affidavits of his friends. The AAO disagrees. Those affidavits were found deficient by both the director in his July 13, 2005 decision and the AAO in its July 3, 2006 decision. There was no need for the director to provide the petitioner with a third explanation of those affidavits’ deficiencies.

In the second portion of the “argument” portion of counsel’s brief, he argues that the evidence of record establishes that the petitioner was subjected to battery and/or extreme cruelty by I-P-. However, the AAO notes that this entire portion of counsel’s brief, which comprises six pages of the entire nine-page brief is, save for one sentence, a verbatim repetition of the brief that counsel submitted to the AAO in 2005. As the AAO considered these arguments when it rendered its July 3, 2006 decision, and found them insufficient to establish battery and/or extreme cruelty, the AAO need not provide counsel with a second description of the insufficiency of those arguments. Rather, the AAO will simply refer counsel to its July 3, 2006 decision. The single sentence that counsel adds to the end of this portion of his brief simply refers the AAO to the new letters from the petitioner, [REDACTED] and [REDACTED] submitted in response to the NOID and on certification. However, as was discussed previously, the AAO finds those letters inadequate to establish the requisite battery and/or extreme cruelty.

The petitioner has failed to establish that the actions of I-P- rose to the level of battery and/or extreme cruelty as described at 8 C.F.R. § 204.2(c)(1)(vi). Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and his petition must be denied. The director’s decision will be affirmed.

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 director’s October 15, 2007 decision is affirmed. The petition is denied.