

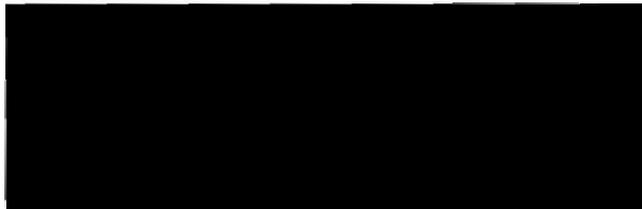
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9



FILE:

EAC 07 041 50458

Office: VERMONT SERVICE CENTER

Date:

MAR 23 2009

IN RE:

Petitioner:



PETITION: Petition for Immigrant Battered 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, 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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

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 October 25, 2007, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty by his spouse.

On appeal, counsel submits additional documentation.

We concur with the director's determination that the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his spouse, D-A-¹. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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 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 also explained 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,

¹ Name withheld to protect individual's identity

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 explained 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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Peru who married D-A-, a United States citizen on August 16, 1997 in New York. The petitioner indicated on the Form I-360, that he resided with D-A- from November 1996 until 2003 or early 2004. D-A- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on September 6, 2003. The director in this matter issued a request for further evidence (RFE) on June 18, 2007, informing the petitioner that the evidence submitted to show that he had been subjected to battery or extreme cruelty was deficient. The petitioner provided a response through counsel. Upon review of the evidence submitted, the director denied the petition on October 25, 2007 and counsel timely appealed.

On appeal, counsel asserts that the director: misinterpreted or misunderstood the petitioner's first affidavit, made the decision prematurely without an in depth report from a reputable therapist, and improperly found a negative implication from the lapse of time between the abusive behavior and the petitioner seeking therapy. Counsel submits the petitioner's additional affidavit on appeal as well as other affidavits in support of the appeal.

Battery or Extreme Cruelty

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

- The petitioner's May 11, 2006 affidavit;
- A May 3, 2006 affidavit from [REDACTED], the petitioner's uncle by marriage;
- A medical instructions sheet regarding care for contusions suffered on August 5, 1998 from a work-related accident;
- A licensed clinical social worker's initial interview report, dated September 9, 2006, and the treatment outcome based on subsequent visits on September 30, 2006, October 14, 2006, November 11, 2006, December 11, 2006 December 30, 2006, January 13, 2007, January 20, 2007, and February 3, 2007;
- The petitioner's September 1, 2007 affidavit;
- The petitioner's November 20, 2007 affidavit;
- A November 14, 2007 letter signed by [REDACTED], certifying that he has been treating the petitioner since July 27, 2007 for depression and photocopies of prescriptions he prescribed for the petitioner;
- Affidavits signed by [REDACTED], [REDACTED], and [REDACTED], submitted on behalf of the petitioner.

In his May 11, 2006 personal statement, the petitioner reported that his wife called him names and cursed at him. The petitioner stated that during the first year of marriage, the naming calling escalated to include physical violence, such as hitting him with her open hand across his face and throwing things to try to hit him. The petitioner indicated that the physical violence included pinching him on the arms, thighs, butt, and nipples and the pinching was so severe that it left black and blue marks. The petitioner added that his wife also demeaned his sexual ability and often deliberately kept him awake at night when he needed sleep. The petitioner noted that in August 1998 he was in an accident at his work and was taken to the emergency room. The petitioner indicated that the nurse saw old black and blue marks and scratches on him and asked him about them and he just indicated that he had been injured at work. The petitioner claimed that the nurse and the doctors asked if he was being beaten at home but he was so ashamed he could not answer. The petitioner indicated that before he left the emergency room, the nurse gave him a sheet of paper that explained his injuries and also gave him information about domestic violence and where he could call for help or speak to someone about it. The petitioner stated that he never contacted anyone about domestic violence. The petitioner repeated that his wife called him names that humiliated him, complained that he did not clean the house, and continued pinching

him.

In the May 3, 2006 affidavit signed by [REDACTED] [REDACTED] indicated his belief that the marriage failed because both the petitioner and his niece were too young and inexperienced. The medical document initially submitted provides instructions for the petitioner's care and treatment of the contusions suffered at work. The medical information does not reference old black and blue marks and does not include information on domestic violence.

In response to the RFE, the petitioner provided a second affidavit, dated September 1, 2007, in which the petitioner indicated that his wife called him and his family vile names and that her actions made him feel afraid for his physical safety. The petitioner reported that he understood that he had to become more submissive, quiet, and compliant if he wanted his wife to stop yelling. The petitioner stated that he felt powerless and dominated. The petitioner provided a summary statement from a licensed clinical social worker but noted that he changed to a medical doctor therapist who seemed to better understand what he had been going through and who provided him medication.

The September 9, 2006 interview summary assessment by the licensed clinical social worker repeats the information the petitioner provided in his initial personal statement. The social worker noted the petitioner's information regarding his emergency visit to the hospital in August 1998 and also noted that the petitioner continued to live with his wife until she decided to move, leaving the petitioner devastated by the separation. The licensed clinical social worker referred him for a physical exam and encouraged him to schedule an appointment with a psychiatrist for medication.

Also in response to the director's RFE, the petitioner provided an additional two affidavits from friends. In the July 2007 affidavit signed by [REDACTED], [REDACTED] declared that he had seen both fresh and old black and blue marks on the petitioner's arms and neck and had joked with **the petitioner that his wife must be a little tiger.** Mr. [REDACTED] noted that he never imagined that the petitioner's wife could really be torturing the petitioner and now that he is beginning to learn all the details of the petitioner's life with his wife, he is rallying around him to encourage him to get therapy and medication. In the July 21, 2007 affidavit of [REDACTED], the petitioner's younger sister, she declares that one time while she was still living in Peru, the petitioner called and was crying saying that he was having problems with his marriage. She also reported that at Christmas in 2003 when she was living in New York, her family got together, including the petitioner and his wife, and the petitioner and his wife were having serious problems in the marriage. Ms. [REDACTED] indicated that the petitioner's wife left their residence and her brother waited up for her all night but she did not return and that her brother suffered anguish and pain.

On appeal, counsel for the petitioner submits the petitioner's third affidavit dated November 20, 2007. The petitioner declares: that he did not feel comfortable with his first therapist as she did not understand him, as he could not discuss his wife's pinching him, and as she did not provide him answers to his questions regarding how he could allow himself to be so dominated; that his first therapist did not provide him with the names of medical doctors that could assist in his treatment, until his attorney

requested that she provide them; that he waited three years to begin treatment because for a time he did not feel motivated to do anything further as he was depressed and sad; that when he realized he might qualify as a victim of domestic violence, he was told it was mandatory to see a therapist but as referenced above his first therapy was not successful; that his new doctor needs additional sessions before he can make a complete report on his medical condition; that he does not know how to explain how powerless he felt and continues to feel, although less so, with his medications; and that he continues to feel vulnerable and only leaves his home to go to work. The petitioner reiterates his feelings of humiliation, anxiety, sadness, and hopelessness and attributes these feelings to how his wife treated him. The petitioner further declares that his wife's treatment of him made him feel less like a man and implies that a man treated in a dominating way by his spouse is extreme abuse.

Counsel for the petitioner also includes an additional three affidavits submitted on the petitioner's behalf. In the November 19, 2007 affidavit signed by [REDACTED] declares: that the petitioner's wife was domineering; that the petitioner's wife called the petitioner names; and that the petitioner's wife did not let the petitioner go out with friends. In the November 19, 2007 affidavit of [REDACTED] declares: that the petitioner's wife was very authoritative and criticized the petitioner, his family, and his heritage a lot; that she yelled at the petitioner when he tried to stroke her arm; that she made financial demands on the petitioner; and that she believes that the petitioner suffered horribly from being abused emotionally by his wife. In the November 19, 2007 affidavit signed by [REDACTED] declares: that the petitioner's wife talked badly about Peru; that she was mean to the petitioner; that she was very superficial; and that the petitioner was not a good match for someone like the petitioner's wife who enjoyed tormenting him.

The record also includes a November 14, 2007 letter signed by [REDACTED] who states: the petitioner "started seeking treatment because @ [sic] 5 yeas [sic] history of feeling Depressed and having changes in his every day-life activities, according to him this was caused secondary to a difficult marital relationship at that time." The record also includes copies of medical prescriptions prescribed by [REDACTED]

Upon review of the record, the AAO concurs with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The AAO has reviewed the petitioner's statements regarding the alleged battery perpetrated by his wife, involving pinching sufficient to result in bruises. The record does not include any independent evidence of these occurrences sufficient to allow a conclusion that D-A-'s pinching constituted battery. The AAO observes that the petitioner provided the medical documentation regarding his accident at work in August 1998 but the information does not reference old black and blue marks and does not include the information he claims he was given about domestic violence and where he could call for help or speak to someone about it. In addition, the affidavit of [REDACTED] who declared that he had seen both fresh and old black and blue marks on the petitioner's arms and neck and had joked with the petitioner that his wife must be a little tiger, is not evidence that substantiates the petitioner suffered battery perpetrated by his wife. The AAO notes that [REDACTED] indicated that he never imagined that the petitioner's wife could really be torturing the petitioner, thus admitting that the bruising was

not so significant or appeared to be a result of sexual activity. The AAO further finds that the affiants do not declare that they witnessed D-A-'s behavior of pinching, hitting, or throwing things at the petitioner. The record is thus insufficient to establish that the petitioner suffered battery perpetrated by his spouse. 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)).

The AAO also does not find that the D-A- subjected the petitioner to extreme cruelty. The AAO acknowledges that the petitioner's marriage involved turmoil and emotional upset, however, his testimony and the testimony provided on his behalf does not demonstrate that his wife's behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The AAO finds that the petitioner's uncle-in-law recognized the youth and inexperience of both parties when entering the marriage and the resulting difficulty of the couple continuing to live together. The affidavits of the petitioner's friends indicate that the petitioner's wife resorted to name calling, disparaging remarks regarding the petitioner's family and heritage, and describe D-A-'s mean acts when she did not get her own way. The acts of the petitioner's spouse, as described by his friends although hurtful and unkind, do not rise to the level of extreme cruelty as those acts are 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 AAO acknowledges the petitioner's sister's affidavit wherein she states that she witnessed the petitioner's despondency and anguish over the actions of his wife. Again, however, the act of leaving the petitioner to reside somewhere else is not an act that constitutes psychological abuse as defined in the Act and regulations.

In addition, the petitioner does not provide a detailed chronological timeline of the acts of his wife. As noted above, the petitioner indicated on the Form I-360 that he lived with D-A- from November 1996 until 2003 or early 2004. However, other than the general statement about his wife's physical violence that escalated about the time of their one-year anniversary, August 1998, "when she began physically abusing me and threatening me every day," the record includes little information regarding a timeline of any battery or extreme cruelty for the next five or six years. The AAO observes that the petitioner's sister's remark upon the petitioner's wife staying out all night at Christmas 2003 is the only other mention of the petitioner's marital difficulties that includes a date. Moreover, the petitioner's friends describe generally one or two occasions when the petitioner's wife was demanding and verbally abusive, but do not provide any information regarding threats, physical abuse, or any specific threatening or controlling behavior of the petitioner's wife that includes forced detention, psychological or sexual abuse or exploitation. The record does not provide sufficient probative detail of the acts of D-A- over the seven to eight year relationship to allow the AAO to ascertain that D-A-'s actions subjected the petitioner to psychological, sexual abuse or exploitation or were part of an overall pattern of violence. The record does not include specific details regarding the time of any threats or coercive actions, the number or content of threats of coercive actions, or that the petitioner perceived any of the threats or other actions against him as serious enough to involve the actions of the police.

As discussed above, the testimony regarding the petitioner's spouse's non-physical behavior does not indicate that her actions were coercive, threatened actual harm, or were aimed at ensuring dominance or control over the petitioner. The petitioner in this matter has not described in probative detail any specific threatening or controlling behavior of his wife. The record does not include probative evidence that the applicant feared for his life or physical injury. The record does not evidence that the actions of the petitioner's wife resulted in the petitioner's psychological trauma any more than that of any broken marriage between two different individuals with strongly different personalities. The claims made by the petitioner and the general statements 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 D-A'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.

The AAO has reviewed the general statement of the licensed clinical social worker who conducted several sessions with the petitioner. The social worker does not offer chronological, clinical, or substantive details of the petitioner's wife's alleged abuse and its specific effects on the petitioner. Similarly, [REDACTED] indicates only that the petitioner is depressed and that according to the petitioner his depression "was caused secondary to a difficult marital relationship at that time." These statements are insufficient to establish that the petitioner suffered psychological trauma resulting directly from his wife's actions. The relevant evidence fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.