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

U.S. Citizenship
and Immigration
Services

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MAY 19 2009

FILE:

EAC 07 033 51215

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

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.


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 The decision of the director will be withdrawn and the petition will be remanded for further action.

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 because the petitioner failed to establish that his wife battered or subjected him to extreme cruelty during their marriage.

On appeal, counsel submits a brief, additional evidence and copies of documents previously filed.

Applicable Law and Regulations

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 clause (ii) or (iii) of subparagraph (B), 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 –

(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.

Pertinent Facts and Procedural History

The petitioner entered the United States on April 24, 2006 as the nonimmigrant fiancé of A-I-¹, a U.S. citizen. The petitioner married A-I- on May 11, 2006 in Texas. The petitioner filed this Form I-360 on November 14, 2006. On June 8, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty. In response, the petitioner submitted additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on November 7, 2007 and the petitioner, through counsel, timely appealed.

On appeal, counsel asserts that the evidence submitted below and on appeal demonstrates that the petitioner's wife subjected him to battery and extreme cruelty. Counsel's claims and the new evidence submitted on appeal fail to overcome the ground for denial.

¹ Name withheld to protect individual's identity.

Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID), as required by the former regulation at 8 C.F.R. § 204.2(c)(3)(ii)(2006) in effect at the time this petition was filed.

Battery or Extreme Cruelty

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

- The Petitioner's October 26, 2006 and July 26, 2007 affidavits;
- Letters and affidavits from [REDACTED] and [REDACTED] including the November 21, 2007 affidavit of [REDACTED] submitted on appeal;
- Note, letter and treatment notes of [REDACTED] the latter submitted on appeal; and
- Photocopies of photographs of the petitioner's wrists and face.

In his affidavits, the petitioner stated that after their marriage, his wife had extramarital affairs, ceased having intimate relations with him, did not allow him to leave their home, beat him up for no reason, threatened to deport him and threw him out of their home on July 27, 2006 when he sought help from [REDACTED] and [REDACTED]. The petitioner also asserted that his wife humiliated, cursed, manhandled and threatened to kill him if he contacted the police. The petitioner did not describe any particular incident of abuse in probative detail and his brief assertions are insufficient to demonstrate that his wife battered or subjected him to extreme cruelty during their marriage.

The remaining, relevant evidence also fails to establish the petitioner's claim. [REDACTED] confirmed that the petitioner called him after his wife threw him out of their home and he contacted [REDACTED] with whom the petitioner stayed. [REDACTED] confirms that he picked up the petitioner after his wife threw him out. In response to the RFE, the petitioner submitted additional affidavits from [REDACTED] and [REDACTED] in which they both stated that the petitioner confided in them about his wife's abuse, but did not describe any particular incident of battery or extreme cruelty in probative detail. On appeal, [REDACTED] states that during his visit the petitioner told him that his wife hit him for "no just cause" and that she was controlling. [REDACTED] does not, however, describe any incident of abuse that he witnessed or provide any further, detailed and probative information regarding his observation of the effects of the alleged abuse on the petitioner.

In his initial, handwritten note, [REDACTED] stated that he treated the petitioner for "chronic headache, insomnia and stress disorder caused by [a] relationship gone sour." In response to the RFE, the petitioner submitted a letter from [REDACTED] in which he stated that the petitioner had "serious emotional stress disorder caused by his wife's verbal and physical abuse and abandonment." The medical records submitted on appeal do not support this statement. The "progress notes" document three visits that the petitioner made to [REDACTED] on September 15, 2006; May 24 and August 3, 2007. None of the notes reference any domestic violence. On the notes from the petitioner's 2006 visit, [REDACTED] diagnosed the petitioner with depression, anxiety, headaches

and anxiety and stated that the petitioner's symptoms began after an unspecified "problem developed" shortly after the petitioner's marriage. In the notes from the May 2007 visit, Dr. [REDACTED] stated that the petitioner had "difficulty accepting that his wife abandoned him and threw him out of the house." The notes from the petitioner's August 2007 visit make no reference to the petitioner's wife or their marriage. In sum, the notes and letter from [REDACTED] confirm that the petitioner experienced physical and psychological health problems related to his marriage. The documents do not, however, demonstrate that the petitioner's wife battered or subjected him to extreme cruelty.

The photocopied photographs are undated and accompanied by no caption or other description. Three of the five pictures show a slight discoloration on the petitioner's wrists. No injury is visible in the other two pictures. The petitioner does not state the date or circumstances surrounding the purported injury and [REDACTED] letter and notes make no specific reference to any bruising or other injury on the petitioner's body.

The petitioner, his pastors and medical doctor all assert that the petitioner's wife abused him, but fail to describe any specific incident of abuse in probative detail. The relevant evidence fails to 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 the requisite battery or extreme cruelty and is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act based on the present record. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation in effect at the time of the petition was filed required U.S. Citizenship and Immigration Services (USCIS) to provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision was made. 8 C.F.R. § 204.2(c)(3)(ii)(2006)². Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his case.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

² The regulation was amended to remove the specific requirement for a NOID on June 18, 2007. 72 Fed. Reg. 19100, 19107 (Apr. 17, 2007). The amended regulation applies to petitions filed on or after that date. *Id.* at 19104.