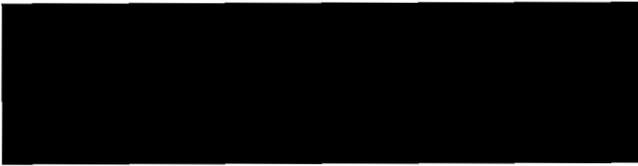




U.S. Citizenship
and Immigration
Services

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MAY 19 2009

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
EAC 07 009 50041

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.

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. 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 pursuant to 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 on December 4, 2007, determining: that the petitioner had not established a qualifying relationship with the alleged abusive spouse; that the petitioner had not established eligibility for immigrant relative classification under section 201(b)(2)(A)(i) of the Act; that the petitioner had not established that he had been subjected to battery or extreme cruelty by his former spouse; and that the petitioner had not established that he is a person of good moral character.

We concur with the director's determination that the petitioner has not established that he had a qualifying relationship with R-G-¹; that he is eligible for immigrant relative classification; and that he was subjected to abuse or extreme cruelty perpetrated by his former spouse. We find that the petitioner submitted evidence on appeal sufficient to overcome the director's determination that he is not a person of good moral character. 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) that was in effect when the petition was 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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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

¹ Name withheld to protect the individual's identity.

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, 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 includes the following pertinent facts. The petitioner is a citizen of India who entered the United States on a K-3 visa on December 27, 2004. He married R-G-, a naturalized United States citizen on January 20, 2003 in India. The couple separated in February 2005 and a final divorce degree was entered on April 5, 2006. The Duval County, Florida Circuit Court judge found that the marriage of the parties is irretrievably broken due to domestic violence. The court also extended R-G-'s request to extend the Injunction for Protection Against Domestic Violence against the petitioner until December 31, 2006. The petitioner filed the Form I-360 on October 10, 2006.

Qualifying Relationship

The petitioner filed the Form I-360 six months after the divorce from R-G- became final. Thus, when the petition was filed, the petitioner and R-G- no longer had a qualifying relationship. As noted above, an exception to the qualifying relationship for a self-petition under this provision of the Act exists, allowing an alien to self-petition within two years after the final order of divorce, if a connection between the legal termination of the marriage and the battering or extreme cruelty by the United States citizen spouse is demonstrated. In this matter, although the legal termination of the marriage was irretrievably broken due to domestic violence, the court found that the domestic violence was instigated by the petitioner, not the United States citizen spouse. Moreover, as found below, the petitioner has not established that he was subjected to battery or extreme cruelty during the marriage by the United States citizen spouse. The petitioner has not established that he qualifies for the exception allowing the late filing of a Form I-360 due to the domestic violence of the United States citizen spouse. The petitioner has not established a qualifying relationship with the claimed abusive spouse.

Eligibility for Immigrant Classification

The petitioner has also failed to demonstrate the requisite eligibility for immigrant classification as an immediate relative based on his former marriage to R-G-. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive U.S. citizen spouse. As discussed in the preceding section, the petitioner has failed to establish a qualifying relationship with R-G-. Accordingly, the petitioner has failed to demonstrate his eligibility for immigrant classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Battery or Extreme Cruelty

The AAO has also reviewed the record regarding the petitioner's claim that he was abused by R-G- and her family. In the petitioner's August 21, 2006 personal statement, the petitioner stated: that once he entered the United States on December 27, 2004 he stayed with his wife and their son in Jacksonville, Florida and began the process of adjusting his immigration status; that once his former wife and her family became aware that it would take three or four years before he would be able to practice medicine in Florida, their attitude toward him changed; that they started treating him badly and without respect;

that his former wife would swear at him and curse him; that his former wife and her parents and brothers would criticize the way he talked, dressed, ate; that his former wife, parents and brothers would ignore him, make insulting and degrading remarks, and treat him like a servant; that he was not allowed to eat food with the family or allowed to use the telephone; and that once when he protested the unfair treatment, an argument ensued and his former wife's two brothers attacked him, hit him and threw him to the ground and his former wife shouted and urged them to break his legs to treat him a lesson. The petitioner also reported that his former wife began accusing him of hitting their child and did not allow him to play with his son.

The petitioner declared: that he was constantly criticized, threatened and verbally abused by his former wife, her two brothers and the rest of his former wife's family; he requested that his former wife move from the marital home with him to live just by themselves; that on February 20, 2005, his former wife's family got together to send him back to India against his will and without any attempt of reconciliation with him or the family; that he boarded the plane in Jacksonville, but during a layover in Washington D.C., he called his former wife's family and begged to work out the conflict with no success; and that he stayed in Virginia and Oregon for the next few months hoping that he could work out a reconciliation with his former wife. The petitioner indicated: that on August 2, 2005 he had the courage to return to Jacksonville, Florida; that he spoke with his former wife at the home but that her family began cursing and threatening him again and that they called the police; and when the police arrived they told the petitioner that he must leave as his former wife did not want him there.

In the petitioner's personal statement dated March 8, 2006 on a motion to modify his former wife's injunction for protection against domestic violence filed against him, the petitioner stated: on December 29, 2004 while holding his son, warm milk spilled resulting in burns on his child; that [at a later time] when he asked his former wife why her family did not like or trust him and were they comparing him to her first husband, his former wife became very angry and shoved him from above, so that he reacted without thinking and slapped her on the face; that he felt so bad about this incident that he hit his head on the wall, told his former wife to take their son outside, and then smashed a mirror on his head and caused three bleeding abrasions; and that after this incident his former wife's family threatened to kill him, to smash his career and prestige in India, kidnapped him and took him to the airport with a one-way ticket back to India.

The record includes evidence that the petitioner's former wife provided statements of the petitioner's behavior and actions in her request for a temporary restraining order against the petitioner and that the petitioner was ordered to attend an anger management course. In addition, the petitioner provided evidence that he filed for protective orders against members of his former wife's family in August 2006, after the dissolution of his marriage. The record also includes statements submitted on the petitioner's behalf, by individuals who met the petitioner subsequent to the separation of the couple and who relate their understanding of the petitioner's domestic situation based primarily on the petitioner's statements. The record includes information that one individual, [REDACTED], attempted to negotiate a reconciliation of the couple through marriage counseling, and this is the only individual who had contact with the petitioner's former spouse and family.

The petitioner in this matter has admitted slapping his former wife and inflicting significant injuries upon himself in response to his action against his former wife. The record includes an order of protection against the petitioner that was extended beyond the date of the final order of the dissolution of the marriage. The record includes information from the petitioner that he attended the anger management course ordered in an effort to comply with the court to regain visitation rights with his son. The AAO has considered the petitioner's statements regarding the verbal abuse and degrading insults he was subjected to and that he indicates were perpetrated by his former spouse and her family. The AAO has also considered the acts of the petitioner's former spouse's family in their attempt to send the petitioner back to India.

The AAO finds that the acts of the petitioner's former wife's family against him are not relevant to establishing that he was subjected to abuse perpetrated by the United States citizen spouse. Although the petitioner alleges that he was beaten up by family members of his former spouse and that on one occasion his former spouse was present during an assault and encouraged her brothers to break his legs to teach him a lesson, the record is insufficient to establish that she instigated or was otherwise a proximate cause of the alleged abuse. There is insufficient evidence to establish that his spouse's words caused the assault or that she was part of the assault. Similarly, the record does not include probative evidence that his former spouse encouraged his removal from the family home against his will in an effort to force him to return to India. Likewise the record does not substantiate that his former wife encouraged or instigated her family's treatment of him, including prohibiting him from eating food with the family or using the telephone. The AAO acknowledges that the petitioner fears his wife's family and requested a restraining order against them after the dissolution of the marriage; however, the regulation requires that the abuse be perpetrated against the petitioner *by his or her spouse*, not a third party. See Section 204(a)(1)(A)(iii)(I)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb), 8 C.F.R. § 204(c)(1)(vi). The record does not include probative evidence that the petitioner's spouse instigated her family's treatment of him.

The record does not contain probative evidence that the petitioner's spouse subjected him to abuse during their marriage. The AAO notes that the petitioner has admitted to slapping his wife on one occasion, has attended an anger management course to comply with the court's order to allow visitation with his son, and that his former wife obtained a restraining order against him. This information does not assist in establishing his claim that his former wife subjected him to battery. The AAO has considered the petitioner's testimony that his wife cursed at him, degraded and insulted him, criticized the way he talked, dressed, ate, and along with her family treated him like a servant. These acts while unkind and inconsiderate do not rise to the level of the acts 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 claims made by the petitioner fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty perpetrated by his former spouse or that his former wife's non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring 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 that constitutes extreme cruelty. The AAO observes that the

petitioner's continued attempts to reconcile with his former spouse further diminish his claims that he feared her or feared acts that, in and of themselves, were not initially violent but could be considered a part of an overall pattern of violence against him.

Upon review of the record, the AAO finds that the record does not include independent evidence of battery or extreme cruelty. The AAO recognizes the petitioner's distress caused by the petitioner's family and his former wife's rejection of him. However, the record does not include detailed probative information establishing that the petitioner's former spouse battered him or subjected him to 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) that was in effect with the petition was filed. 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.