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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

B9



FILE: [Redacted]
EAC 06 266 51241

Office: VERMONT SERVICE CENTER

Date: APR 08 2010

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 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 wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits the following: a brief; a copy of a Judgment of Dissolution of Marriage dated December 7, 2007; and copies of documentation previously submitted.

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 filed 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China who married J-C-¹, a naturalized U.S. citizen, in China on April 15, 2002, and was admitted into the United States on June 25, 2003 as a K-3 nonimmigrant. On June 10, 2002, J-C- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on May 17, 2003. On September 11, 2003, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which is still pending.

The petitioner filed the instant Form I-360 on September 27, 2006. On January 23, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite qualifying relationship, as the evidence in the record indicated that the petitioner and J-C-'s marriage was terminated on September 17, 2004, and thus a qualifying relationship did not exist within two years prior to filing, as required by statute. The petitioner submitted an order entered on July 17, 2007, from the Circuit Court of Cook County, Illinois, declaring the September 17, 2004 dissolution of the marriage void and vacated. On October 15, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residency, good-faith entry into the marriage, battery or extreme cruelty, and good moral character. The petitioner, through prior counsel, timely responded to the RFE with additional evidence. On April 23, 2009, the director issued a NOID for lack of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through prior counsel, timely responded to the NOID with additional evidence. On June 25, 2009, the director denied the I-360 petition

¹ Name withheld to protect individual's identity.

because the petitioner did not establish that his wife subjected him to battery or extreme cruelty during their marriage. Counsel timely appealed the denial of the instant I-360 petition.

On appeal, counsel claims that U.S. Citizenship and Immigration Services (USCIS) erred in its denial of the petition. Counsel claims further that USCIS did not take into consideration any of the submitted facts, statements, or evidence, including the petitioner's Judgment of Dissolution of Marriage, which indicates that the petitioner's wife was guilty of extreme mental cruelty. Counsel also claims that the petitioner, as a Chinese male, did not want to reveal that his wife "slapped and battered him."

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's affidavits dated September 12, 2006, submitted at the time of filing and in response to the director's October 15, 2007 RFE, and May 22, 2009, submitted in response to the director's April 23, 2009 NOID;
- The petitioner's December 6, 2007 Judgment of Dissolution of Marriage;
- Letters dated April 6, 2006 and April 13, 2006, respectively, from [REDACTED] of [REDACTED] located in Chicago, Illinois;
- An affidavit dated April 28, 2006, from [REDACTED] the program coordinator of [REDACTED], located in Chicago, Illinois; and
- A letter dated November 15, 2007, from [REDACTED] a mental health counselor from [REDACTED]

At the outset, the AAO acknowledges petitioner's December 6, 2007 Judgment of Dissolution of Marriage from the County Department – Domestic Relations Division of the Circuit Court of Cook County, Illinois, which specifies that the petitioner's wife "has been guilty of extreme mental cruelty and that [the petitioner] did nothing to cause or provoke these acts." A state court's ruling on the dissolution of an alien's marriage may be relevant, but is never binding on U.S. Citizenship and Immigration Services (USCIS) determination of the alien's eligibility for immigrant classification under section 204(a)(1)(A)(iii)(I)(bb) of the Act. Therefore, the AAO is not bound to find that the petitioner has established battery or extreme cruelty simply because of the findings that appear on the petitioner's Judgment of Dissolution of Marriage.

In his September 12, 2006 affidavit, the petitioner stated that a few weeks after he arrived in the United States on June 25, 2003 on a K-3 visa and moved into his wife's apartment, he noticed that she had an unusual relationship with the landlord. The petitioner reported that his wife also wanted him to find a job right away and after he was unsuccessful in doing so, the petitioner noticed changes in his wife, specifically that she could be distant and cold. The petitioner stated that his wife began calling him names and told him he was stupid, useless, and a burden to her, and that she regretted marrying him and petitioning for him to come to the United States. The petitioner reported that the situation worsened, that his wife spent most of her spare time with the landlord, and that he felt

isolated and hopeless, as he had no friends, spoke limited English, and did not know his way around the city. The petitioner explained that he felt tense and nervous around his wife, that he was in constant fear and could not relax, and that he developed symptoms of mental illness. The petitioner stated that around September or October of 2003, his wife told him to leave, whereupon he stayed at a motel in Chinatown for a few weeks until he found an apartment through a Chinese newspaper. The petitioner explained that he was depressed for more than a year after his separation from his wife, and that around July of 2004, he ran into his wife in Chinatown, whereupon he discovered that she was pregnant with the landlord's child, and that she was sending divorce papers for him to sign. The petitioner stated that around August or September of 2004, his wife gave birth and a couple of months later, their immigration attorney informed him that his wife had withdrawn his paperwork and had obtained a default divorce judgment. The petitioner explained that around March or April of 2005, he started receiving treatment for his depression, and that his life has since improved.

In his May 22, 2009 affidavit, the petitioner stated that three weeks after his arrival to the United States to join his wife, "everything started falling apart." The petitioner stated that his wife mistreated and disrespected him because he did not have a job. The petitioner reported that in August of 2003, after he accidentally splashed water on the floor, his wife "suddenly pushed me down the stairs," which resulted in bruises on his leg and pain. The petitioner also reported that he was "very scared" after his wife threatened to have him sent back to China. The petitioner stated that his wife did not want him to eat any of the food that she had bought, and that she called him stupid and useless. He reported that she stole his money, and in September of 2003, she took away his apartment key, whereupon he feared going outside and being unable to get back in. The petitioner stated that he suffered from headaches, sleeplessness, and nightmares, and that in October of 2003, his wife told him to move out. The petitioner stated that he took a bus to Chinatown and called a person he had met on the airplane, who allowed him to stay with her and her family for two months. The petitioner stated that after he moved out of his friend's apartment, he called his wife, but did not hear back from her. The petitioner repeats the information that he provided in his September 12, 2006 affidavit regarding his wife's pregnancy and divorce proceedings. The petitioner explained that in the six years since his separation from his wife, he has been working and seeing a counselor.

In addition to the evidence discussed above, the record contains letters dated April 6, 2006 and April 13, 2006, respectively, from [REDACTED], located in Chicago, Illinois. In her April 6, 2006 letter, [REDACTED] states that she first met with the petitioner on August 18, 2005, and has continued to meet with him every month for depression treatment. In her April 13, 2006 letter, [REDACTED] states that, as the petitioner's treating psychiatrist since August 18, 2005, she has been treating him for depression every one to two months, and that the petitioner is taking medication daily for his depression. [REDACTED] states further: "It is my belief he will attain a full recovery from depression, as he continues to respond to treatment, and recover from the abusive marriage conditions precipitating his depression." [REDACTED] provides conflicting information in her two letters regarding how often she meets with the petitioner. Moreover, she does not specify the exact dates or length of her treatment sessions with the petitioner or provide any specifics regarding her meetings with the petitioner. Nor does [REDACTED] describe what she means by the petitioner's "abusive marriage conditions."

The record also contains an affidavit dated April 28, 2006, from [REDACTED], the program coordinator of [REDACTED], located in Chicago, Illinois, stating that the petitioner went to the agency for treatment in June 2005, and was diagnosed with a major depressive disorder that was caused by his adjustment to a new cultural environment and by an abusive marriage that resulted in divorce. [REDACTED] reiterates much of the petitioner's testimony and states that, to date, the petitioner attended 34 individual sessions with him. [REDACTED] states further that the petitioner currently reports "a more stable mood" and a decreased level of depression. [REDACTED] concludes: "It is my belief that he will be able to make a full recovery in the future receiving continuous counseling and getting back to a more stable life situation." Again, [REDACTED] does not specify the exact dates or length of his individual therapy sessions with the petitioner or provide any specifics regarding the petitioner's individual therapy sessions.

The record also contains a letter dated November 15, 2007, from [REDACTED], a mental health counselor from [REDACTED], stating that in July of 2007, she started working with the petitioner, who was diagnosed with major depressive disorder, and has been meeting with him bi-weekly for individual therapy. [REDACTED] states further: "I believe that [the petitioner] will continue to benefit from individual therapy and psychiatric treatment at our agency in order to achieve full recovery." Again, [REDACTED] does not specify the exact dates or length of her therapy sessions with the petitioner or provide any specifics regarding the petitioner's bi-weekly therapy. Nor does [REDACTED] describe any specific incidents of abuse reported by the petitioner.

In this case, we do not find the petitioner's evidence to be credible or sufficient to meet the petitioner's burden of proof. As discussed above, [REDACTED] and [REDACTED] do not describe any specific incidents of abuse reported by the petitioner. In addition, as stated by the director in his June 25, 2009 decision, the petitioner's affidavits provide conflicting testimony regarding the alleged physical abuse by his wife. It is also noted that the petitioner's claim in his May 22, 2009 affidavit that after his wife told him to move out, he moved with a person he met on the airplane, conflicts with his claim in his September 12, 2006 affidavit that he stayed at a motel in Chinatown for a few weeks until he found an apartment through a Chinese newspaper. These inconsistencies diminish the evidentiary value of his statements. The petitioner's allegation of extreme cruelty is based upon the claims that his spouse was distant and cold, called him names, had a baby with another man, took away his apartment key, and asked him to move out. The petitioner also claimed that his wife threatened to have him deported. As described, the actions by the petitioner's wife 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 conflicting 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 his 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.

Upon review of the record in its entirety, the record does not indicate that the petitioner's wife

subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner's wife 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.

The petitioner has not demonstrated that his 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.