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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
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Services

B9



FILE: [REDACTED]
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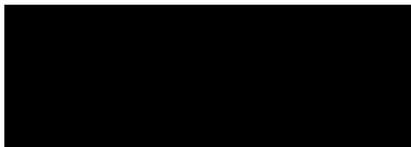
Office: VERMONT SERVICE CENTER

Date: **AUG 03 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:

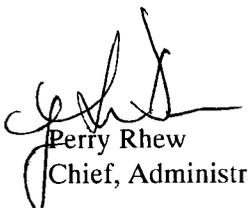


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
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 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 a brief. Counsel asserts that the director erred in finding that the petitioner did not meet his burden of proof in establishing that he was battered or abused. Counsel asserts that the affidavits of [REDACTED] as well as the psychological evaluation from [REDACTED] establish the requisite abuse.

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 Mexico who entered the United States without inspection reportedly in 1991. On January 9, 1998, the petitioner married M-P-¹, a U.S. citizen. On February 2, 1998, M-P- filed a Form I-130, Petition for Alien Relative, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, both of which were automatically terminated on February 11, 2000, due to abandonment. On May 28, 2002, the I-485 application was denied due to the abandonment of the I-130 petition. On December 10, 2003, M-P- filed a second I-130 petition, and the petitioner concurrently filed a second I-485 application, both of which were denied on April 12, 2006 because, on three separate occasions, the petitioner and M-P- failed to appear for their scheduled interview.

The petitioner filed the instant Form I-360 on August 19, 2008. On October 8, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite abuse. The director also asked whether the petitioner and M-P- were still married. The petitioner, through counsel, responded with additional evidence. On January 28, 2010, the director denied the instant I-360 petition because the petitioner did not establish that his wife subjected him to battery or extreme cruelty during their

¹ Name withheld to protect individual's identity.

marriage. The petitioner timely appealed the denial of the instant I-360 petition.

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:

- An affidavit from the petitioner, dated June 4, 2008;
- An affidavit from Saul Tufinio, dated June 26, 2008;
- An affidavit and a statement from [REDACTED] dated June 20, 2008 and January 2, 2010, respectively;
- An affidavit and a statement from [REDACTED] dated June 20, 2008 and January 2, 2010, respectively; and
- A psychological evaluation report dated July 27, 2008, from [REDACTED]

The AAO affirms the director's determination that the petitioner did not establish the requisite battery or extreme cruelty.

In his June 4, 2008 affidavit, the petitioner states, in part, that M-P- abandoned him without explanation or reason on or about February 2000, and that he does not know her whereabouts.

In his June 26, 2008 affidavit, [REDACTED] states, in part, that the petitioner used to tell him about his problems with his wife, including her not telling him where she was going at night. [REDACTED] also states that the petitioner looked very sad due to the arguments he had with his wife and her ultimate abandonment of him.

In her June 20, 2008 affidavit, [REDACTED] states, in part, that she was the petitioner's neighbor, and that she remembered seeing him outside for long lengths of time, which, according to what he told her, was how he avoided confrontations with his wife.

In her January 2, 2010 statement, [REDACTED] states, in part, that the petitioner told her that his wife always humiliated him and left with her mother for days at a time. [REDACTED] also states that she saw the petitioner drunk, which, according to what he told her, was how he forgot his problems.

In her June 20, 2008 affidavit, [REDACTED] states, in part, that she was the petitioner's neighbor and that the petitioner went to her house a few times to tell her that his wife was difficult to live with and verbally abusive to him.

In her January 2, 2010 statement, [REDACTED] states, in part, that the petitioner told her that his wife always humiliated him and stayed out all night, and that he drank to forget about his problems.

The AAO acknowledges the affidavits and statements, discussed above, from [REDACTED] [REDACTED] Their observations of the petitioner, which include his sad appearance and his

drinking to forget his problems, fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that M-P-'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 AAO also acknowledges [REDACTED] July 27, 2008 evaluation, which was the result of interviews on April 18 and 26, 2008, for approximately three hours. [REDACTED] states that the petitioner described his first year of marriage with M-P- as "largely conflict free," and that during their second year of marriage, conflicts began to occur, including M-P-'s going out with her friends and spending the night at her mother's apartment. The petitioner reported that that when M-P- did come home, she was evasive and smelled of alcohol, and that he began drinking daily, which escalated their arguments and fights. The petitioner reported that M-P- left him in January 2001, only to try to get back together with him approximately four years later because she "was having financial difficulties and . . . viewed returning to him as a potential solution to her problem." The petitioner reported feeling depressed, demoralized, and hurt, and turned to alcohol because of the loneliness and isolation he felt. [REDACTED] states:

[The petitioner] endured significant psychological pain and harm during his relationship with [M-P-]. . . [and he] will suffer additional harm if his application for residency is not accepted and his is deported due to lack of spousal support. . . Furthermore, in spite of the reported difficulties during his marriage there is no record of domestic violence.

[REDACTED] diagnoses the petitioner with "Adjustment Disorder with Mixed Anxiety and Depressed Mood, Alcohol Abuse – In Full Remission."

The psychological evaluation from [REDACTED] indicates that there was no record of domestic violence during the petitioner's marriage to M-P-. [REDACTED]'s psychological evaluation also fails to establish that M-P-'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. [REDACTED] finds that the petitioner "endured significant psychological pain and harm during his relationship with [M-P-]," and diagnoses the petitioner with "Adjustment Disorder with Mixed Anxiety and Depressed Mood, Alcohol Abuse – In Full Remission," but [REDACTED] does not indicate that he treated or recommended any specific treatment for the petitioner. Moreover, [REDACTED] does not provide substantive, probative information indicating that M-P-'s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. It is also noted that the record contains scant testimony from the petitioner himself concerning the alleged abuse and, while the petitioner reported to [REDACTED] that M-P- left him in January 2001, the petitioner states in his own June 4, 2008 testimony that M-P- left him on or about February 2000. The record contains no explanation for this inconsistency.

While we do not question the expertise of [REDACTED], his testimony fails to establish that the behavior of the petitioner's wife rose to the level of battery or extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Again, Dr. Parra attests to the petitioner's having problems with his wife, and

ultimately being abandoned by her, but does not provide substantive, probative information indicating that her behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

In this case, we do not find the petitioner's evidence sufficient to meet the petitioner's burden of proof. As discussed above, the petitioner himself has provided scant testimony regarding the alleged abuse, and he provided inconsistent testimony as to when M-P- left him. As described, the actions by M-P- 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 petitioner has failed to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that M-P-'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 M-P- subjected the petitioner to battery. The relevant evidence also fails to demonstrate that M-P- 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.