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



**U.S. Citizenship
and Immigration
Services**



B9.

FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 17 2010**

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:

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 petition will be denied.

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.

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).

On January 11, 2010, the director denied the petition, determining that the petitioner had not established: that he had a qualifying relationship with a U.S. citizen; that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse; and that he had entered into the qualifying relationship in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, the petitioner's January 18, 2010 affidavit, and other documents previously submitted.

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 further 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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Palestine. He initially entered the United States on March 22, 2000 as a B-2 visitor. On September 20, 2000, the petitioner married ■■■¹, the claimed abusive United States citizen spouse. On January 29, 2003, a Final Decree of Divorce was entered by the Family District Court of Montgomery County, Texas. On July 21, 2004, the petitioner filed a Form I-751, Petition to Remove the Conditions on Residence, which was denied on December 17, 2005. On January 21, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that he resided with ■■■ from September 25, 2000 to November 29, 2006 and that their last place of residence was in Edmond, Oklahoma.

Qualifying Relationship

The director determined that the petitioner had not established a qualifying relationship with ■■■ because his marriage to ■■■ was legally dissolved on January 29, 2003 and the Form I-360 was filed almost six years later. The language of the statute clearly indicates that to remain eligible for classification despite no longer being married to a United States citizen, an alien must have been the *bona fide* spouse of a United States citizen "within the past two years" and demonstrate a connection between the abuse and the legal termination of the marriage. 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). As previously noted, the petitioner in this matter was divorced from his spouse for more than two years at the time of filing the petition. Moreover, as will be discussed below, the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his United States citizen spouse and has not established that he was the *bona fide* spouse of a United States citizen.

Neither counsel nor the petitioner offers any evidence or argument on appeal on this issue. The

¹ Name withheld to protect the individual's identity.

director's decision on the issue of qualifying relationship is affirmed.

Abuse

In support of the petition, the petitioner submitted an unsigned and undated personal statement. The petitioner indicated: he tried to do everything for his spouse but she was not satisfied; that she liked to go out to clubs and drank too much; that her attitude was aggressive and harsh to him; and that their conversations always included her using bad words. The petitioner stated: that later [REDACTED] went to Houston to visit her mother and that she did not come back; that he went to Houston for almost one month to convince her to come back; that his brother-in-law also tried to help fix the relationship; and about one week later he received a letter from [REDACTED] lawyer confirming that she was filing for divorce. In a separate letter dated December 23, 2008 the petitioner noted that he was attending counseling sessions at the Faith Family Physician practice.

The petitioner also provided a November 26, 2008 statement from his brother-in-law, [REDACTED] Mr. [REDACTED] indicated that the petitioner had been abused mentally by his ex-wife and that although he tried to help fix the relationship, [REDACTED] refused to change her life style and attitude toward the petitioner. The record also included a December 5, 2008 statement by [REDACTED], M.D. of Faith Family Physicians, who indicated: that the petitioner had been his patient since 2002; that he had been treated for severe depression and anxiety disorder; and that his illness was triggered and exacerbated by very difficult family situations and problems. The record further included a photocopy of a prescription dated December 5, 2008 for an anti-depressant.

On appeal, the petitioner provided the same statement as previously provided but added in the January 18, 2010 statement on appeal: that he never struck [REDACTED], even when she slapped and scratched him; that one time she threw a cordless phone at him and caused a bruise on his arm; and that she yelled curse words in front of his brother-in-law. The petitioner added further that J-R would tell him they did not have enough money for an oil change for his car and that their electricity was cut off two times.

The AAO finds that the record also included the petitioner's August 17, 2005 affidavit filed in support of the Form I-751. In the August 17, 2005 affidavit, the petitioner noted some of the issues in his marriage with [REDACTED]. The petitioner declared: that [REDACTED] liked to go to clubs, but he did not; that [REDACTED] liked to drink socially, but he did not; that she dressed in a manner he did not like; and that [REDACTED] wanted to work during the marriage but he did not want her to work.

Upon review of the petitioner's statements, the AAO does not find sufficient evidence to establish that the petitioner has been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse. The petitioner has provided general testimony and, moreover, his statements demonstrate a gradual escalation in the severity and type of claimed abuse. The petitioner's statement in support of the Form I-751 reveals the petitioner's belief that the marriage ended because of personal and cultural differences regarding social activities and work. The petitioner in his initial statement in support of the Form I-360 adds that [REDACTED]s attitude was aggressive and harsh to him and

that their conversations always included her using bad words. The petitioner in his statement on appeal further adds that ■■■- slapped and scratched him, and one time she threw a cordless phone at him that caused a bruise on his arm. The AAO finds that the escalation of the type and severity of the claimed abuse amounts to inconsistent testimony on the part of the petitioner and undermines the credibility of his testimony.

The petitioner's testimony is not only inconsistent but also lacks specificity. The record lacks sufficient probative testimony to demonstrate that ■■■s generally described actions 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 record does not include probative testimony that the petitioner was the actual victim of any act or threatened act of physical violence or extreme cruelty, that ■■■; 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 has reviewed the statements submitted by the petitioner's brother-in-law and by Dr. ■■■. The statement of ■■■ fails to provide the necessary detail surrounding the circumstances of any incident or incidents that describes an event demonstrating that the petitioner was a victim of extreme cruelty as set out in the regulation. Similarly, Dr. ■■■ statement does not provide examples of the causal relationship of specific abuse that is related to the petitioner's severe depression and anxiety disorder. He does not provide the necessary detail of underlying traumas or causative factors that support a conclusion that the petitioner's medical condition is due to abuse experienced at the hands of his United States citizen spouse. Neither of these statements is probative in establishing that the petitioner has been subjected to battery or extreme cruelty perpetrated by his former spouse.

When evaluating the record as a whole, the AAO finds the record lacks information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO does not accept generic information with little chronological timeline to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter, he has failed to do so. The petitioner has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by his former spouse.

Good Faith Entry into Marriage

The petitioner in his initial unsigned and undated statement in support of the Form I-360 indicated generally that he met ■■■ while visiting his sister in Houston. The petitioner stated: that he met ■■■ at a video store; that she invited him to dinner; that they went out three days later; that the relationship became stronger; and that they decided to marry because of their love, even though he was not ready financially to handle the responsibility of marriage. The petitioner noted that he convinced ■■■- to move to Oklahoma City although she did not want to move. The petitioner also

submits statements signed by [REDACTED] and [REDACTED], wherein the declarants state their belief that the petitioner married [REDACTED] in good faith. The record also included photographs of the couple on several different occasions, photocopies of two visa cards in the petitioner and [REDACTED] names, and photocopies of six months of checking statements for the time period between July 2001 and March 2002.

Upon review of the information in the record, the AAO finds that the petitioner's statements discuss the claimed abuse and do not provide specific information regarding his intent in marrying his spouse. Although the petitioner noted that he and [REDACTED] relationship became stronger and they decided to marry because of their love, the petitioner does not describe the couple's introduction in detail, does not describe their interactions prior to the marriage or after the marriage, other than as it related to the claimed abuse, and does not provide any information that would assist in establishing that he entered into the marriage in good faith.

The AAO has reviewed the statements submitted on the petitioner's behalf and does not find any probative details regarding the declarants' observations of the petitioner's allegedly good faith entry into the marriage. The declarants do not describe any particular incidents wherein they witnessed the alleged bona fides of the couple's marital relationship. The general statements submitted do not substantiate that the petitioner's intent upon marrying [REDACTED] was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the intent of the petitioner upon entering into the marriage.

The photographs submitted show that the petitioner and [REDACTED] were together on several different occasions, but this evidence alone fails to establish the requisite good faith marriage. The documents submitted as referenced above, are insufficient to establish that the petitioner intended to establish a life with [REDACTED]. For example, the banking statements do not identify who made the withdrawals and deposits. The documents submitted fail to demonstrate the petitioner's intent when entering into the marriage. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on his behalf fail to support a finding that he entered into this marriage in good faith. It is not just that the affidavits submitted are similar, but rather it is the generality and bareness of detail included in the affidavits that fail to establish the actual knowledge of the petitioner's intent in entering into the marriage. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner has also failed to establish that he was eligible for immediate relative classification based on a qualifying relationship. 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 qualifying relationship to the abusive U.S. citizen. As discussed above, the petitioner has not demonstrated that he had a qualifying relationship with [REDACTED]. He consequently has also failed to establish that he was eligible for immediate relative classification

based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed.