

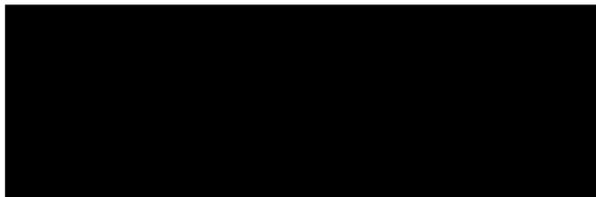
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



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



Bq

FILE:



Office: VERMONT SERVICE CENTER

Date: DEC 16 2010

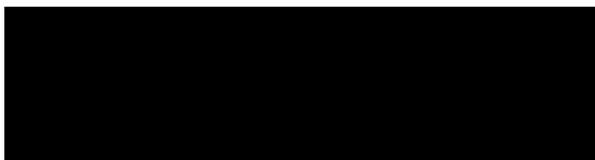
IN RE:

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 the \$630 fee. 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 his United States citizen spouse.

On July 7, 2010, the director denied the petition, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and brief in support of the appeal.

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 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 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 in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of South Africa. He entered the United States on or about September 24, 2004 on a B-2 visa. On June 8, 2005, the petitioner married J-M-¹, the claimed abusive U.S. citizen spouse. On March 1, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On the Form I-360, the petitioner indicated that he had resided with J-M- from June 2005 to January 2009.

Abuse

The petitioner initially provided a personal statement dated December 21, 2009 in which he indicated that: J-M- initially did not file a Form I-130, Petition for Alien Relative, on his behalf because the couple lacked the financial means to file the petition; in June 2008 funds for the Form I-130 were raised, the couple hired counsel, and an appointment for an immigration interview was made; two days before the scheduled interview, J-M- went visiting friends and did not appear for the immigration interview; three days after the scheduled interview, J-M- re-appeared and the

¹ Name withheld to protect the individual's identity.

petitioner's counsel scheduled another immigration interview; and days prior to the second scheduled interview, J-M- disappeared again and the petitioner has not seen or heard from her since she disappeared. The petitioner provided a statement he made to [REDACTED] Ph.D. licensed psychologist, in which the petitioner indicated that he had seen a track mark on J-M-'s arm and also remembered seeing less pronounced track marks, and from this observation he concluded that J-M- was a drug user. The petitioner noted that when he confronted J-M- with his conclusion, she became defensive and angry and denied using drugs. The remaining portion of the petitioner's declaration relates to the difficulty he would face if had to return to South Africa.

In the November 9, 2009 psychological evaluation prepared by [REDACTED] [REDACTED] determined: "[r]esulting from the circumstances with his wife, and his concerns about not being able to remain in the U.S., [the petitioner] has developed substantial clinical anxiety and depression." [REDACTED] [REDACTED] noted that the results of two psychological tests and the clinical interview showed that the petitioner "is clinically anxious and meets criteria for the diagnosis of Generalized Anxiety Disorder as well as depressive disorder. [REDACTED] opined that as the petitioner had not experienced anxiety or depression before, it appeared that recent events caused his depression and anxiety. [REDACTED] [REDACTED] recommended that the petitioner attend weekly outpatient psychotherapy and obtain a psychiatric evaluation for medication.

In response to the director's request for further evidence (RFE), the petitioner provided a second personal statement dated May 12, 2010. In the second declaration, the petitioner stated that: he suffered social isolation because once the couple's financial situation became difficult, J-M- would not try to find work and they did not have money to go out or attend family events; J-M- never introduced him to her friends; the few times the couple went out, J-M- was jealous and controlling; J-M- was unhappy with his contact with his mother; and J-M- constantly threatened to leave him knowing that it would impact his ability to stay in the United States. The petitioner noted that by J-M- not attending the immigration interview, his life is in shambles and he believes that J-M- never intended to attend the immigration interviews because she wanted to use him for food and a place to stay. The petitioner also provides a May 12, 2010 statement signed by his parents indicating that the petitioner could not visit them in San Diego because J-M- always used the excuse that they did not have the clothes or money to bring a gift and J-M- managed to convince the petitioner to stay away. The petitioner further provides a statement signed by [REDACTED] dated May 13, 2010, in which he declared that the couple lived with him but that when the couple was invited to a party or function, J-M- never wanted to attend and the petitioner would always stay with her and that slowly more and more friends moved away from them.

On appeal, counsel for the petitioner repeats the information in the record and asserts that the information in the record demonstrates that the petitioner had a good faith marriage with J-M-, that the petitioner had a qualifying relationship, and that the petitioner was subjected to extreme cruelty by his U.S. citizen spouse.

Upon review, the petitioner's statements do not provide the probative evidence necessary to establish he has been subjected to battery or extreme cruelty. The petitioner does not claim and the record does

not show that he was subjected to battery. The petitioner's allegation that he was subjected to extreme cruelty is based initially on his spouse's failure to show up for the immigration interview and his suspicion that she used drugs. The petitioner, however, does not provide any probative detail indicating that his spouse used his immigration status to control or dominate him. His suspicion that his spouse used drugs, while unfortunate, even if established, is not behavior that constitutes extreme cruelty. In response to the director's RFE, the petitioner added that his spouse would not try to find work, that she did not introduce him to her friends, that she was jealous and controlling, and that she was unhappy with his contact with his mother. The petitioner, however, does not provide probative detail of specific actions or events that would lead to the conclusion that his spouse's behavior constituted extreme cruelty as defined in the statute or regulation. The petitioner also added his belief that his spouse never intended to attend his immigration interview and that she just used him for room and board. Again, the petitioner's speculation is not based on any particular actions, statements, or threats carried out by his spouse and he does not detail any threats accompanied by violence or threats of physical or mental injury taken against him by J-M-. The record does not establish that the petitioner's spouse's behavior rose 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.

Similarly, the affidavits submitted by the petitioner's parents and [REDACTED] on the petitioner's behalf do not provide any information about specific incident(s), actions or behavior that could constitute extreme cruelty as set out in the statute and regulation. The affiants indicate that the petitioner's spouse convinced him not to participate in parties or other functions or to visit his parents, but these general actions are insufficiently described to allow a conclusion that these actions constitute controlling behavior that equates to extreme cruelty as defined in the regulation. The affiants do not provide probative testimony regarding the circumstances of any specific incident that could be considered battery or extreme cruelty.

Upon review of [REDACTED] November 9, 2009 evaluation, [REDACTED] does not describe any actions or behaviors reported to him by the petitioner that constitute battery or extreme cruelty. [REDACTED] opines generally that the petitioner's circumstances with his wife and the petitioner's inability to remain legally in the United States, appear to have caused the petitioner's Generalized Anxiety Disorder and depressive disorder; however, [REDACTED] does not offer a diagnosis of the petitioner's mental health that is causally connected to specific events or incidents of battery or extreme cruelty as those elements are defined in the statute and regulation.

Upon review of the totality of the information in the record, including the petitioner's testimony, the affidavits submitted on his behalf, and [REDACTED] evaluation, the record does not provide sufficient probative evidence to demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that J-M-'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 is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse

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in order to meet his burden of proof. In this matter he has failed to do so.

The petition will be denied and the appeal dismissed for the above stated reason. 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.