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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:

DEC 16 2010

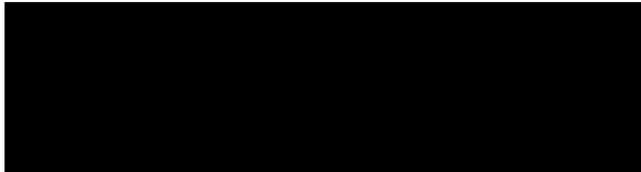
IN RE:

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 August 10, 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.

The petitioner submits a Form I-290B, Notice of Appeal or Motion, a statement, and excerpts from the Wikipedia website.

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 the Philippines. He entered the United States on February 13, 2006 on a K-1 visa. On March 17, 2006, the petitioner married D-A-¹, the claimed abusive United States citizen. On May 11, 2009, 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 D-A- from February 2006 to January 2008. The marriage was terminated on June 24, 2009.

Abuse

In support of the petitioner's claim that he was subjected to battery and extreme cruelty, the record includes:

- The petitioner's April 8, 2009 statement and his statement on the Form I-290B;
- An April 16, 2010 affidavit signed by [REDACTED] and

¹ Name withheld to protect the individual's identity.

- An April 15, 2010 affidavit signed by [REDACTED] on April 16, 2010.

In the petitioner's initial statement in support of the Form I-360, he declared that everything in his marriage started to change when his spouse met another man as she thereafter began to treat him badly. The petitioner indicated that: his spouse called him names, cursed him, and criticized him; she started coming home late at night drunk; and one night he confronted her after she came home late and she told him that she had met someone else and had fallen out of love with the petitioner. The petitioner stated that his spouse often times would threaten that she could have him sent back to his country whether he liked it or not and that this made him depressed and worried about his status. The petitioner indicated further that his wife is living in Mexico with the man she left him for and has had this other man's baby.

In response to the director's request for further information (RFE) on this issue, the petitioner provided two affidavits from friends. In the affidavit of [REDACTED] declared that: he had seen the petitioner being insulted by D-A-; he believes D-A- is trying to degrade the petitioner; she does not care for the petitioner so much that she almost slapped his face; and he believes that the petitioner suffered emotional and psychological abuse. In the affidavit of [REDACTED] declared that the petitioner told him that: D-A- had been unfaithful; she insulted the petitioner and his family; and threatened the petitioner if the petitioner went to see anyone or a medical psychiatrist.

Based on this information, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty.

On appeal, the petitioner asserts that his case is not just about infidelity and abandonment but is about an evil wife who got pregnant from another man and then proceeded to mentally torture her husband. The petitioner claims that not only did his wife get pregnant by another man she amplified his emotional pain by verbally abusing him and calling him degrading names. The petitioner attaches excerpts [REDACTED] regarding sadistic personality disorders.

Upon review of the petitioner's statement and his assertions on appeal, the AAO concurs with the director's decision. The petitioner has not presented detailed testimony that establishes he was subjected to battery or extreme cruelty as defined in the statute and regulation. The petitioner states generally that his spouse called him names, criticized him, and threatened him. The petitioner failed to describe in probative detail any specific threatening or controlling behavior of his wife. There is no detailed information identifying specific events or circumstances of extreme cruelty. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents to result in a conclusion that the petitioner was subjected to battery or extreme cruelty. In this matter he has failed to provide such testimony.

The petitioner has not established that he was subjected to his wife's claimed sadistic personality. The [REDACTED] an open web source, does not establish that the petitioner's spouse had a sadistic personality or that her actions toward the petitioner were sadistic in nature. Upon review of

the petitioner's description of the emotional turmoil he claims to have suffered caused by his spouse's infidelity, her abandonment, and her pregnancy with another man's child, these actions are not actions that constitute extreme cruelty under the statute or regulation. The record does not include probative evidence that establishes the petitioner's spouse subjected him to psychological abuse or exploitation, or that her actions were part of an overall pattern of violence. The record does not include probative evidence that demonstrates the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty as set out in the statute and regulation.

Similarly, the affidavits submitted on the petitioner's behalf do not provide any information about specific incident(s) of abuse. [REDACTED] although indicating that he heard the petitioner's spouse insult the petitioner, does not provide any detailed information that establishes that the petitioner was subjected to battery or extreme cruelty. [REDACTED] does not indicate he witnessed any interactions between the petitioner and his spouse. There is insufficient information in either affidavit to demonstrate that the petitioner was subjected to battery or extreme cruelty perpetrated by D-A-.

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 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.