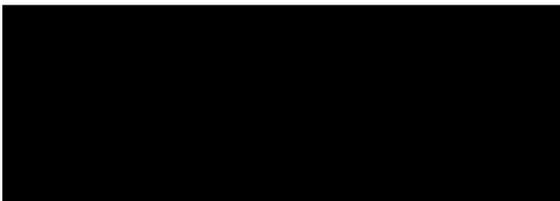


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



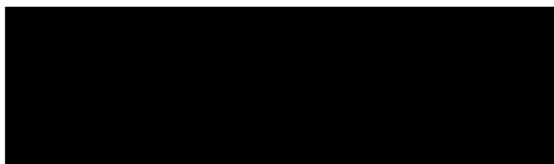
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FILE:  Office: VERMONT SERVICE CENTER Date: **DEC 27 2010**

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 remain 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.

On June 15, 2009, the director denied the petition, determining that the petitioner had not established that: he had resided with the claimed abusive United States citizen spouse; he had been subjected to battery or extreme cruelty by the United States citizen spouse; and he had entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, the petitioner’s statement, and a verified bill of particulars filed in a lawsuit between the petitioner and the estate of the driver regarding injuries suffered in a car accident that occurred on August 26, 2008.

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 Pakistan. He last entered the United States on or about July 4, 2005 as a B-2 visitor. He married S-C-¹ the claimed abusive United States citizen spouse on July 12, 2005. On August 3, 2005, S-C- filed a Form I-130, Petition for Alien Relative on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-130 was initially approved. The couple was interviewed on January 18, 2007. On May 24, 2007, the approval of the Form I-130 was revoked and the revocation was re-issued on October 2, 2008. The petitioner's initial Form I-485 was denied for lack of prosecution. On September 29, 2006, the petitioner filed a Form I-485 based on the approved Form I-130; however, as the Form I-130 had been revoked, the Form I-485 application was denied on May 24, 2007. On September 29, 2006, S-C- filed a second Form I-130, which was denied on October 2, 2008. On June 18, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

Residence

On the Form I-360 the petitioner claimed that he resided with S-C- from July 2005 to September 2008. The record includes the following in support of the petitioner's claim that he resided with the claimed abusive spouse:

- The petitioner's June 8, 2009 statement submitted in support of the Form I-360 and the petitioner's July 27, 2010 personal statement submitted in support of the appeal;
- The June 8, 2009 affidavit signed by [REDACTED];
- The March 30, 2010 affidavit signed by [REDACTED] in response to the director's request for evidence (RFE); and.
- The March 30, 2010 affidavit signed by [REDACTED] also in response to the director's RFE.

¹ Name withheld to protect the individual's identity.

In the petitioner's initial statement, he indicated that: he initially met S-C- in 2000 through mutual friends and their relationship eventually grew into a romantic relationship; when his student visa ended he returned to Pakistan; and because he loved her so much he returned to her in 2005. The petitioner indicated that he was in a car accident on August 26, 2008 and that after S-C- saw him in the hospital, she went to stay with her brother and never came back. In [REDACTED] June 8, 2009 statement, he declared that he was present at the petitioner's wedding to S-C- and that he had spent time with them together in their home. In response to the director's RFE, counsel submitted two more affidavits. In the March 30, 2010 affidavit of [REDACTED] did not provide any information regarding the couple's joint residence. Similarly, in the March 30, 2010, affidavit of [REDACTED] he did not provide any information regarding the couple's joint residence.

On appeal, counsel for the petitioner asserts that the director failed to consider the devastating injuries suffered by the petitioner in his August 26, 2008 accident and the resulting inability of the petitioner to contact S-C- to request documents to demonstrate that the couple resided together. In the petitioner's July 27, 2010 affidavit, he declared that his condition has prevented him from preparing his application. He declares that he lived with S-C- until the day of the accident. The petitioner's bill of particulars indicates that the petitioner was in the hospital from August 26, 2008 to September 8, 2008, and underwent several surgeries. The bill of particulars alleges that the petitioner was confined to his bed for two and one-half months and to his home to on or about August 12, 2009.

Preliminarily, the AAO withdraws the director's comment that the petitioner's statement alone, without corroborating evidence does not establish residency. However, upon review of the record including the allegations included in the bill of particulars, the petitioner has not established that he jointly resided with S-C-. Neither the petitioner's testimony nor the testimony of those individuals who provided affidavits on his behalf provides any information regarding the couples' residence, such as a description of the residence and its location, their shared belongings or other information which would assist in demonstrating a joint residence. While corroborating documentation is not a requirement, the petitioner's failure to provide reasonable explanations regarding his inability to obtain documentation casts doubt on the veracity of his statements. Upon review of the totality of the information in the record, the record fails to establish that the petitioner resided with the claimed abuser. The petitioner has provided insufficient evidence to establish the requisite joint residence during the marriage.

Abuse

The record includes the following in support of the petitioner's claim that he was subjected to battery or extreme cruelty perpetrated by her former spouse:

- The petitioner's June 8, 2009 statement submitted in support of the Form I-360 and the petitioner's July 27, 2010 personal statement submitted in support of the appeal;
- The June 8, 2009 affidavit signed by [REDACTED]
- The March 30, 2010 affidavit signed by [REDACTED] in response to the director's

- request for evidence (RFE); and
- The March 30, 2010 affidavit signed by [REDACTED] also in response to the director's RFE.

In the petitioner's June 8, 2009 statement, the petitioner declared that: a few months after their marriage, S-C- became critical of everything that he did; she began smoking marijuana all the time; she demanded money from him promising it was for personal items but spent it on drugs; she was smoking so much the couple was kicked out of their apartment; and she began stealing money from his wallet to buy drugs. The petitioner also indicated that after his car accident on August 26, 2008, S-C- visited him in the hospital and told him he looked messed up and that she was going to stay with her brother in Manhattan. The petitioner noted that S-C- knew that he would not be able to have marital relations so eventually began living with another man and had that man's child. The petitioner noted further that S-C- made fun of his injuries and although she is with someone else, she will still call him and ask for money.

In the affidavit of [REDACTED] declared that S-C- started doing a lot of drugs and he almost never saw her when she was not high, that she spent a lot of money on drugs, and that she started stealing from the petitioner. [REDACTED] also noted that S-C- did not behave well after the petitioner's accident and that she started to cheat on him. In the affidavit of [REDACTED] declared that as soon as the couple married their problems started. [REDACTED] also noted that S-C- started doing a lot of drugs and kept using the petitioner's money and made fun of the petitioner. [REDACTED] indicated that when S-C- was at the hospital after the petitioner's accident, he heard her say that she did not want to be the petitioner's nurse. In the affidavit of [REDACTED] indicated he noticed that the petitioner's marital problems were getting worse and worse and that S-C- would spend money on drugs and would talk badly to the petitioner. [REDACTED] also noted that while the petitioner was in the hospital, he heard S-C- talking to a lawyer about the accident and it was clear to him that all she was looking for was money from the accident.

The petitioner also provided a psychological evaluation prepared by [REDACTED] dated April 12, 2009. [REDACTED] interviewed the petitioner on April 11, 2009 for an unspecified length of time. [REDACTED] noted that the petitioner reported that his wife used a lot of marijuana, demanded money from him, was very critical of him, and used derogatory language when he confronted her about her marijuana use. [REDACTED] also noted that the petitioner reported that S-C- consumed alcohol daily, that she asked him to perform oral and anal sex and when he refused she told him other men were more sexually proficient than he. [REDACTED] further noted that following the petitioner's accident, the petitioner reported his dismay when he learned that S-C- was living with someone else and had that man's child. [REDACTED] determined that the petitioner developed a Major Depressive Disorder as a direct result of the verbal, emotional, and sexual spousal abuse he absorbed during his marriage to S-C-.

Based on the above evidence, the director determined that the petitioner had not established that his spouse attempted to control him through psychological means but that the facts indicate only that the petitioner and his spouse had differing goals and reasons for entering into the relationship. The

director determined that the petitioner had not provided evidence to demonstrate his qualification under this requirement.

On appeal, counsel for the petitioner asserts that the director failed to consider the petitioner's devastating injuries and that the record includes sufficient evidence to allow the matter to be returned to United States Citizenship and Immigration Services (USCIS) for approval. The petitioner does not add further testimony regarding specific incidents or actions by his spouse that he asserts constitutes battery or extreme cruelty.

Upon review of the record, the AAO concurs with the director's determination regarding the petitioner's failure to establish that he was subjected to battery or extreme cruelty perpetrated by S-C-. The petitioner in this matter does not provide sufficient evidence to demonstrate that S-C-'s unkind behavior was a form of psychological or sexual abuse or was otherwise part of an overall pattern of violence that constitutes extreme cruelty under the statute and regulation. 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 such a conclusion. In this matter they do not. The petitioner provided limited and general information regarding S-C-'s behavior. The petitioner's statements that S-C used drugs, used derogatory language, demanded money from him, and stole money from him are not actions that constitute battery or extreme cruelty under the statute and regulation. Likewise, the petitioner's spouse's infidelity and abandonment are not acts of extreme cruelty under the statute and regulation. The petitioner has not provided the requisite information that shows he was 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 or any psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution. The petitioner's medical condition subsequent to his car accident and his spouse's disregard for his condition do not demonstrate that he was subjected to extreme cruelty or that he was the victim of any act or threatened act of physical violence or extreme cruelty, that S-C-'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 him. The petitioner's testimony does not provide probative detail of circumstances that constitute battery or extreme cruelty. His statements in this regard are insufficient.

The statements of the affiants who submitted affidavits on the petitioner's behalf do not provide any probative information that would assist in a conclusion that the petitioner was subjected to battery or extreme cruelty as set out in the statute and regulation.

Upon review of [REDACTED] opinion, her report indicates that her findings were based upon a single interview with the petitioner. As her contact with the petitioner was limited, her opinion fails to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, and thus her findings appear speculative and consequently the value of her evaluation is diminished. In addition, her opinion is based on the petitioner's general statements and she does not identify the specific underlying trauma or specific incident or event that was a causative or contributing factor in the petitioner's mental health condition. Moreover, [REDACTED] adds information not reported by

the petitioner in his own affidavit that regards the petitioner and his spouse's sexual intimacy. The petitioner's failure to report this information in his own affidavit raises the specter of inconsistency and thereby detracts from the probative value of the petitioner's statement and [REDACTED] opinion. Moreover, [REDACTED] does not provide the requisite information that S-C-'s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

While the AAO recognizes the difficulty in obtaining evidence to support a conclusion that the petitioner was subjected to battery or extreme cruelty, neither the petitioner's statements nor the statements submitted on his behalf provide the detailed, consistent, and probative evidence that establishes eligibility for this benefit. The petitioner does not provide the requisite detail to demonstrate that S-C-'s actions are comparable to the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Good Faith Entry into Marriage

The petitioner has also failed to establish that he entered into the marriage in good faith. In the petitioner's statement in support of the petition, the petitioner indicated that he met S-C- through mutual friends and that they developed a romantic relationship and that after his student visa expired and he returned to Pakistan, he then returned to the United States to marry her. The petitioner does not provide any detail regarding the courtship of and his interactions with S-C- prior to or during the marriage, except as her actions relate to the claimed abuse. The petitioner's statements do not provide any specific information regarding his intent in entering into the marriage. A finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a bona fide marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). The petitioner's statements when reviewed in their totality do not demonstrate that the petitioner's intent to enter into the marriage was in good faith. The petitioner's marriage certificate and Form I-130 filed by his spouse confirm their marital relationship, but do not establish the petitioner's own good faith in entering into the marriage.

Similarly, the statements submitted on behalf of the petitioner do not establish the petitioner's good faith in entering into the marriage. Other than stating generally that the couple was initially happy together and appeared to be a loving couple for a short time, and that they cared deeply for each other, the affiants provide no probative details regarding their observations of the petitioner's alleged good faith entry into marriage.

The petitioner's testimonial evidence and the testimony submitted on his behalf in this matter 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 and legitimacy of 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.

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