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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
and Immigration
Services

[Redacted]

B9

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: DEC 27 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)

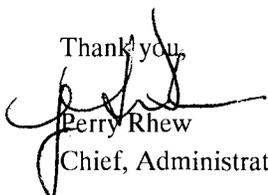
ON BEHALF OF PETITIONER:

[Redacted]

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, filed 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 Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted. The previous AAO decision to dismiss the appeal and deny the petition will be affirmed.

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 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).

The director denied the petition, after determining that the applicant had not established that he had been subjected to battery or extreme cruelty by the United States citizen spouse. The AAO affirmed the director’s decision and dismissed the appeal. Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal or Motion.

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 includes the following pertinent facts and procedural history. The petitioner is a native and citizen of Malaysia who was admitted into the United States on May 20, 2001, as a B-2 nonimmigrant. On November 9, 1999, the petitioner married G-N-¹, the claimed abusive spouse, in Malaysia. G-N- became a naturalized U.S. citizen on February 16, 2006. On June 18, 2001, G-N- filed a Form I-130, Petition for Alien Relative, which was approved on August 7, 2004. On March 10, 2006, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which remains pending. On July 31, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant and concurrently filed a Form I-485. Upon review of the initial evidence submitted, the director issued a request for evidence (RFE) on April 25, 2008. Upon review of the totality of the evidence submitted, including the petitioner's response to the RFE, the director denied the petition on September 10, 2009. The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty by his United States citizen spouse.

In its June 18, 2010 decision, the AAO reviewed the evidence relevant to the petitioner's claim that

¹ Name withheld to protect the individual's identity.

he had been subjected to battery or extreme cruelty during the marriage, which consisted of:

- The petitioner's statement, dated June 30, 2007, submitted at the time of filing, and his statement, dated July 10, 2008, submitted in response to the director's RFE;
- A statement dated May 20, 2008, from [REDACTED];
- A statement dated July 16, 2008, from [REDACTED];
- A letter, dated May 29, 2007 from [REDACTED], and attachments;
- A copy of a letter dated August 7, 2006, addressed to the petitioner from G-N-'s attorney, threatening criminal charges if the petitioner did not vacate the property located at: [REDACTED];
- Eight letters written by the petitioner to his children;
- A neurological evaluation, dated May 19, 2008, from [REDACTED] n;
- An article from Wikipedia entitled *Anxiety Disorder*; and
- An article from Merck entitled *Depressive Disorders*.

The AAO described the deficiencies in the evidence previously submitted and will only repeat the deficiencies as they are relevant to counsel's assertions on motion.

The record on motion includes counsel's brief, the petitioner's additional statement, photographs of an injury to the petitioner's hand sustained while at work, and a work release form from the Inova Fairfax Hospital. The petitioner in his statement on motion adds that in July 2006 G-N- "used a knife to stop [him] from questioning her about her affair with an unknown man" and that she had lied to him about having an extramarital affair. The petitioner notes that his wife will not let him see his three children and that he has used all his savings in the custody and divorce proceedings. The petitioner states that his former spouse continues to hurt him and indicates that a male who spoke very good English called his boss and told his boss only things his former spouse would know and that this individual reported to his boss that the petitioner was working illegally, although the petitioner had work authorization. The petitioner states further that he was injured at work when he failed to concentrate and was cut by some fiber glass material.

On motion, counsel for the petitioner asserts that the AAO did not use the "any credible evidence" standard that is required for VAWA petitions. Counsel contends that the AAO failed to realize that the mental medical reports submitted were submitted to establish the petitioner's mental injury, not the abusive acts of the petitioner's wife. Counsel avers that the AAO's failure to find that the acts of: (1) committing multiple adulteries with no desire to repent or change; (2) humiliating one's spouse in front of others; (3) lying to one's spouse repeatedly; (4) forcing one's spouse to be removed from the marital home; (5) isolating one's spouse socially; (6) depriving the petitioner's right to contact his children; (7) using police force or threatening the use of police force to deprive the spouse's use of one's property; and (8) subjecting the spouse to deportation or threats of deportation, is in error. Counsel claims that in light of the legal standard, Congressional intent, and the proper legal definition of extreme cruelty, the evidence submitted supports the petitioner's claim that he was battered by or was the subject of extreme cruelty under the Act and regulations.

We disagree. While section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to “consider any credible evidence relevant to the petition” (Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J)), this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of” USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, “All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(iv). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner’s burden of proof. While USCIS must consider all credible evidence relevant to a petitioner’s claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner’s burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

The AAO previously considered the mental medical reports submitted and understands that the petitioner’s mental condition suffered as the result of the breakup of his marriage and his inability to obtain custody of his children or continue his immigration case through his spouse. However, the reports submitted do not, as counsel acknowledges, establish the abusive actions of the petitioner’s former spouse. The deficiency of the mental medical reports as pointed out by the AAO in its previous decision is that the reports do not provide examples of specific abuse that is consistently detailed to the mental health evaluators’ clinical impression that the petitioner suffered from anxiety and depression. Further, neither [REDACTED] provide substantive, probative information indicating that the petitioner’s former spouse’s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

The AAO acknowledges that the break up of the petitioner’s marriage and the resulting custody battle regarding his children caused the petitioner great pain; however, the acts of committing multiple adulteries with no desire to repent or change, humiliating a spouse in front of others, lying to a spouse repeatedly, forcing the spouse to be removed from the marital home, and depriving the spouse’s right to contact his children, as described, are not acts of extreme cruelty under the statute and regulation. The petitioner in this matter has not demonstrated that his former spouse’s non-physical actions were tactics of control intertwined with the threat of harm in order to maintain her dominance in the marriage through fear. Similarly, the petitioner’s spouse’s failure to pursue the petitioner’s immigration status when the marriage is disintegrating is not an act that constitutes extreme cruelty. Upon review of the petitioner’s statements regarding his social isolation, threats his spouse made regarding the use of his property, and threats of deportation, the petitioner has not provided substantive detail in his statements that demonstrate that these threats constituted controlling actions that were part of a cycle of psychological or sexual violence. The actions of the petitioner’s former spouse, as described, 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.

Upon review of the petitioner's reference on motion that his former spouse "used a knife to stop [him] from questioning her about her affair with an unknown man," the AAO notes that this reference does not include sufficient information regarding the details of this incident. The petitioner's anguish over not being allowed to see his children has been before the family courts and is not an issue that has been adequately documented before USCIS to suggest that the petitioner's spouse's actions are actions that constitute extreme cruelty under the statute and regulations. The petitioner's claim that his wife continues to harass him at work is speculative. There is insufficient information in the record connecting the individual who called his workplace to actions of the petitioner's former spouse. Similarly, the petitioner's work injury is not causally connected to any specific action on the part of his former spouse.

The petitioner's statement on motion does not offer probative evidence that establishes that he was subjected to battery or extreme cruelty perpetrated by his former spouse. Counsel in this matter has not submitted any pertinent precedent decisions sufficient to establish that the director's September 10, 2009 decision or the AAO's June 18, 2010 decision was based on an incorrect application of law or USCIS policy based on the evidence of record at the time of the initial decision. Counsel asserts his disagreement with the director and the AAO's decisions but fails to offer evidence or argument that the prior decisions were based on an incorrect application of the law. The record is deficient in establishing that the director or the AAO misinterpreted the evidence of record.

Accordingly, upon review of the totality of the record, the petitioner has not established that he was subjected to battery or extreme cruelty as set out in the statute and regulation. The petitioner has not presented a basis to overturn the AAO's previous determination that he failed to establish that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met, and the previous decision of the AAO will be affirmed.

ORDER: The motion is granted. The September 10, 2009 decision of the director and the June 18, 2010 decision of the AAO are affirmed. The petition remains denied.