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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

B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **DEC 30 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, with a fee of \$630. 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 petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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.

The director denied the petition because the petitioner did not establish that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief, and asserts, in part, that the petitioner was subjected to extreme verbal, mental, and emotional cruelty and abuse by his former spouse. As supporting documentation, counsel submits a new psychological evaluation from [REDACTED], dated October 12 and 30, 2010; and copies of previously submitted documentation.

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, 8 U.S.C. § 1154(a)(1)(J) 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 explicated 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 filed under section 204(a)(1)(A)(iii) of the Act are further explicated 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 case provides the following pertinent facts and procedural history. The petitioner is a national of Palestine, who entered the United States as an F-1 nonimmigrant student on September 5, 2001. On December 20, 2004, the petitioner married S-D-¹, a U.S. citizen. On February 8, 2005, S-D- filed a Form I-130, Petition for Alien Relative, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On April 12, 2006, the District Director denied the Form I-485, due to lack of prosecution. On June 29, 2009, the Field Office Director terminated all action on the Form I-130, due to the withdrawal of the petition by S-D-. On September 18, 2009, the petitioner was served with a Notice to Appear for removal proceedings and remains in proceedings before the Los Angeles, California Immigration Court. On December 29, 2009, the petitioner and S-D- were divorced.²

The petitioner filed the instant Form I-360 on March 8, 2010. On April 1, 2010, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character and abuse. The director also requested any correspondence related to the petitioner's removal proceedings. The

¹ Name withheld to protect individual's identity.

² [REDACTED] Fifth Judicial District Court, Nye County, Nevada.

petitioner, through counsel, responded with additional evidence, including a copy of the petitioner's previously submitted statement, dated December 29, 2009. On September 27, 2010, the director denied the instant I-360 petition because the petitioner did not establish that his former spouse subjected him to battery or extreme cruelty during their marriage. The petitioner, through counsel, timely appealed the denial of the instant I-360 petition.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that his former spouse subjected him to battery or extreme cruelty during their marriage:

- A statement from the petitioner, dated December 29, 2009;
- Three psychological evaluations from [REDACTED] dated November 9, 2009, May 26, 2010, and October 12 and 30, 2010, respectively.

The AAO affirms the director's determination that the petitioner did not establish the requisite battery or extreme cruelty.

The record does not include a statement from the petitioner submitted in response to the director's RFE or on appeal. In his December 29, 2009 statement submitted at the time of the petition's filing, the petitioner states, in part, that about a year after they were married, S-D- was laid off from her job and became very moody, began to drink more, complained that the petitioner did not spend enough time with her, and started to make problems from small issues. The petitioner explains that he tried to help S-D- stop drinking because they had agreed before they were married that she could not drink at home as it was against his religion. The petitioner states that S-D- began to party every night and smoke "weed" with her high school friends. The petitioner also states that when he confronted S-D- about her smoking, she did not admit to it, left the house, and did not return his calls when he tried to contact her. The petitioner states that S-D- called after three weeks, and they went out and talked for three hours whereupon they agreed she would stop partying every night and she would look for a job. The petitioner explains that he later found out that S-D- had called him only because she had had a "a big fight" with her father who then wanted her to move out. The petitioner states that after she moved back in with him, S-D- did not stop doing the things they had talked about, and that he and S-D- would fight and not communicate because she was either drinking or "high" and that every time he tried to talk to her she threatened to "remove the [I-130 petition]." The petitioner states that he began to miss many days of work and that one of S-D-'s friends told him that S-D- was cheating on him while he was at work. The petitioner explains that one night he found S-D- in their apartment with another man, whereupon she left their apartment and moved in with her new boyfriend. The petitioner states that two months later, he received a letter from "INS" that his case had been denied because the petition had been "removed."

In his first evaluation, [REDACTED] states, in part, that he conducted a one-hour session with the petitioner on November 9, 2009. [REDACTED] reports that the petitioner separated from his wife in January 2009, that they filed for a divorce in the last month, and that the petitioner's brother is his

only family support. [REDACTED] states that the petitioner is experiencing severe headaches, some gastrointestinal distress, weight loss, and sleep loss, which are directly related to his emotional and psychological stress. [REDACTED] clinical impression is that the petitioner has symptoms of Major Depression, due to two reasons: his separation from his wife and pending divorce; and the uncertainty about his future in the United States. [REDACTED] recommends that the petitioner consult with his physician to start on an anti-depressant and that he begin individual psychotherapy twice monthly.

In his second evaluation, [REDACTED] specifies the "Date of Service" as May 26, 2010, but does not specify the length of the session. [REDACTED] states that the petitioner scored a 60 on the Self-Inventory for Symptoms of Post-Traumatic Stress Disorder (PTSD), suggesting that the petitioner has many symptoms of PTSD. [REDACTED] states that the petitioner stayed in the relationship with his spouse because of the threat that she "would withdraw the petition for citizenship." Dr. [REDACTED] also states that the petitioner reported no physical abuse but "he did experience his x-wife [sic] act out in violent ways, like punching and putting a whole [sic] in the wall or throwing things." [REDACTED] states that the petitioner meets the criteria for Post Traumatic Stress Disorder and Battered Spouse Syndrome, and recommends "Individual Psychotherapy twice a month to deal with PTSD symptoms."

In his third evaluation, [REDACTED] specifies the "Date of Service" as October 12 and 30, 2010, but does not specify the length of these sessions. [REDACTED] states that the petitioner's former spouse began a pattern of alcohol and substance abuse after she lost her job, a problem which escalated into a daily occurrence. [REDACTED] states that angry outbursts, pushing the petitioner, and throwing objects became commonplace, and states, "A pattern of substance abuse and violence toward the [petitioner] became an almost daily occurrence." [REDACTED] states that the petitioner "became fearful and anxious each time he would come home" due to S-D's statements and name calling, such as "'F ing' terrorist," and constant ridicule of him and his friends. [REDACTED] also states that the petitioner began staying away from home and spending "the night or even a few days with his uncle to avoid the conflict at home." [REDACTED] states that the petitioner is a victim of extreme cruelty and that "[t]he humiliation and degradation led to isolation and withdrawl [sic] from the support [of] family and friends."

Upon review of the totality of the information in the record regarding the claimed abuse of the petitioner, the AAO finds that the petitioner has failed to describe in probative detail specific threatening or controlling behavior of his former wife that constitutes battery or extreme cruelty. It is noted that the petitioner described no physical abuse from his former wife in his December 29, 2009 statement. The petitioner described his former wife's behavior after her lay-off from her job, which included drinking, smoking marijuana, making problems from small issues, threatening to withdraw the visa petition filed on his behalf, fighting with him, cheating on him, and ultimately moving out of their apartment to move in with her new boyfriend, but as found by the director, these actions do not constitute extreme cruelty as set out in the regulations. The petitioner has not established that his former wife's abandonment of him for another man constituted psychological or sexual abuse or was otherwise part of an overall pattern of violence. Likewise, the petitioner's former's wife's other

behaviors, including drinking at home in violation of the petitioner's religion, smoking marijuana, fighting with him, and threatening to withdraw the visa petition she had filed on his behalf, 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. The petitioner's claims fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that S-D-'s behavior was accompanied by any substantiated coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over him. In sum, the AAO finds that the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty.

The AAO has reviewed the three psychological evaluations from [REDACTED]. As stated by the director, [REDACTED]'s evaluations do not establish that the petitioner was subjected to battery or extreme cruelty by his former wife during their marriage. The AAO acknowledges [REDACTED]'s clinical impression in his first psychological evaluation, based on a one-hour session with the petitioner on November 9, 2009, that the petitioner's symptoms of Major Depression were due to his separation from his wife and pending divorce and to the uncertainty about his future in the United States. In his psychological evaluation, [REDACTED] does not provide any specific information indicating that the alleged abuse by the petitioner's wife was a causative or contributing factor to the petitioner's mental and/or physical health condition. In addition, although, [REDACTED] recommends that the petitioner consult with his doctor for medication for depression and that he begin individual psychotherapy twice monthly, the record contains no evidence of such consultation or therapy.

The AAO also acknowledges [REDACTED] conclusion in his second psychological evaluation that the petitioner suffers from PTSD. [REDACTED], however, does not specify the length of his session with the petitioner on May 26, 2010. Moreover, while [REDACTED] reiterates a description of the petitioner's history, he also mentions information reported by the petitioner that is not mentioned in, and/or is inconsistent with, his first psychological evaluation and/or in the petitioner's own testimony, which detracts from the probative value of [REDACTED] second psychological evaluation. For example, [REDACTED] reports that, at times, the petitioner would leave his home and stay with his uncle due to his former wife's "addictive behavior," that the petitioner's former wife acted out in violent ways, including punching a hole in the wall or throwing things, and that the petitioner's former wife made racial or cultural comments to demean him. Again, this information is not mentioned in Dr. [REDACTED] first psychological evaluation and it is not corroborated by any testimony from the petitioner himself. Moreover, [REDACTED] statement that the petitioner would leave his home and stay with his uncle is inconsistent with [REDACTED] statement in his first psychological evaluation that the petitioner's only family support is his brother. It is also noted that, although [REDACTED] recommends individual psychotherapy twice monthly for the petitioner, the record contains no evidence of such therapy.

The AAO also acknowledges [REDACTED] conclusion in his third psychological evaluation that the petitioner is the victim of extreme cruelty. Again, although [REDACTED] specifies the "Date of Service" as October 12 and 30, 2010, he does not specify the length of these sessions. Moreover, while [REDACTED] reiterates a description of the petitioner's history, he also mentions information reported

by the petitioner that is not mentioned in his first and/or second evaluations or in the petitioner's own testimony, which detracts from the probative value of [REDACTED] third psychological evaluation. For example, [REDACTED] reports that it became commonplace for the petitioner's former spouse to push him, that "violence toward the [petitioner] became an almost daily occurrence," that the petitioner's spouse would demand money from him, that the petitioner's friends were also objects of his former wife's ridicule, and that the petitioner lived out of his car or stayed with his uncle towards the end of his marriage. Also, as previously mentioned, [REDACTED] statement that the petitioner would stay with his uncle is inconsistent with [REDACTED] statement in his first psychological evaluation that the petitioner's only family support is his brother. It is additionally noted that, while Dr. [REDACTED] concludes that the petitioner is a victim of extreme cruelty, he does not recommend any treatment for the petitioner.

While we do not question the expertise of [REDACTED] his testimony fails to establish that the behavior of the petitioner's former wife rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). As stated previously, [REDACTED] mentions information reported by the petitioner that either is not mentioned in or conflicts with his previous testimony and the petitioner's own testimony, which detracts from the probative value of [REDACTED] evaluations and diagnoses. In sum, [REDACTED] does not provide substantive, probative information indicating that the petitioner was subjected to actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

In this case, we do not find the petitioner's evidence sufficient to meet his burden of proof. The petitioner does not claim and the record does not indicate that S-D- subjected him to battery. The relevant evidence also fails to demonstrate that S-D- subjected him to extreme cruelty during their marriage, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also has not resolved the inconsistencies and/or deficiencies discussed herein that diminish the evidentiary value of his statements. Accordingly, the AAO concurs with the findings of the director that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Beyond the director's decision, the AAO finds that the petition is also not approvable because the record fails to establish that the petitioner has a qualifying relationship as the spouse, intended spouse, or former spouse of a U.S. citizen and is eligible for immediate relative classification based on a qualifying relationship with his former wife. The language of the statute clearly indicates that to remain eligible for classification despite no longer being married to a U.S. 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 case was divorced from his spouse on December 29, 2009, and he filed the instant Form I-360 on March 8, 2010. As the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his former spouse, he has also failed to make the causal connection between his divorce and any abuse. Accordingly, the petitioner is also not eligible for the benefit he seeks because he did not establish a qualifying relationship as the spouse, intended spouse, or former spouse of a U.S. citizen, and is eligible

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for immediate relative classification based on a qualifying relationship with his former wife.

“The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).”

The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.