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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

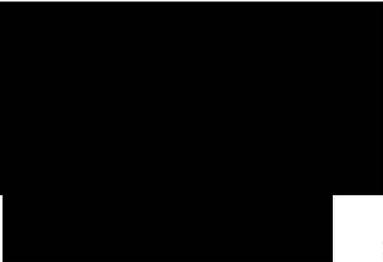


U.S. Citizenship
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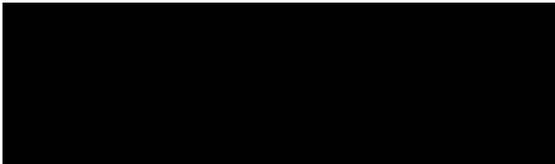
IN RE:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and 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 under 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.

The director denied the petition for the petitioner's failure to establish that he was subjected to battery or extreme cruelty.

On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal and the petitioner's September 22, 2009 affidavit. Counsel asserts in a statement accompanying the Form I-290B: that United States Citizenship and Immigration Services (USCIS) improperly entered a decision on this matter without first issuing a Notice of Intent to Deny (NOID) the petition; that USCIS inadequately examined the evidence submitted; that the petitioner's affidavit set out specific examples of extreme mental abuse; and that the petitioner's recollection of the events set out in his affidavits brings the petition within the definition of extreme cruelty. Counsel contends that the petitioner has met his burden of proof.

As set out below, the AAO concurs with the director's determination that the petitioner has not established that he was subjected to the requisite battery or extreme cruelty.

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 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 Trinidad. The record includes a Form I-94 showing the petitioner was admitted into the United States in B-2 status on January 22, 2002. The petitioner provided a copy of a marriage certificate showing that he married L-L¹, a United States citizen on June 13, 2003 in the City of New York. The record includes a copy of the petitioner and L-L’s divorce decree issued February 6, 2007. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), Special Immigrant on

¹ Name withheld to protect individual’s identity.

September 19, 2007. Upon review of the record, including evidence submitted in response to the director's requests for further evidence (RFE), the director denied the petition on August 27, 2009. This timely appeal followed.

Preliminarily, the AAO observes that the issuance of a NOID prior to denying a Form I-360 petition under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), is not a regulatory requirement for petitions filed on or after June 18, 2007. As the petition in this matter was filed on September 19, 2007, the director was not required to issue a NOID prior to denying the petition. Of note, the director in this matter issued a request for further evidence on October 2, 2007 and on October 3, 2008. The director also reopened this matter on a Service motion, after entering a denial decision on May 27, 2009, to consider late submitted evidence on behalf of the petitioner.

Battery or Extreme Cruelty

The record does not include a statement or any documentation submitted with the Form I-360 regarding battery or extreme cruelty. In the petitioner's initial personal statement, dated November 21, 2007, apparently submitted in response to the director's RFE, the petitioner stated: his wife did not tell him that she had two children from another relationship; that she lied to him constantly about staying at her mother's house; that she refused to introduce him to her mother and children; that she would be gone for days and when she returned would refuse to tell him where she had been which would lead to a big argument; that his wife got pregnant but kept it from him for four months; and that after the baby was born she confessed that she was cheating with some other guy. The petitioner states that he felt ashamed, worthless, cheated and fooled and at the same time embarrassed. The petitioner noted further that he became isolated from his family and friends. The petitioner indicates that after months of verbal abuse name calling and begging his wife to move away from New York and start over, he decided to file for divorce. The petitioner indicated further that he had been advised to seek counseling and was in the process of finding someone who could help him get counseling.

The record before the director also included an affidavit dated March 3, 2008 and signed March 14, 2008 from the petitioner's brother. The petitioner's brother stated: that after a few months of marriage, L-L- started to act differently and that she spoke to the petitioner in a "disrespectful manner" in his presence. The affiant also indicated that he noticed that his brother started to drink more than usual, was short-tempered, and unkempt. The affiant indicated that on one occasion when he was visiting his brother, what appeared to be a normal conversation between the petitioner and L-L- suddenly became loud and disrespectful and L-L- started throwing the petitioner's clothes out the window.

The record before the director further included an affidavit dated March 16, 2009 signed by [REDACTED] who stated: that he had known the petitioner for several years; that he was introduced to L-L- after the petitioner married her; and that occasionally they went out together after the couple was married but stopped after a while when the relationship between the petitioner and

L-L- became unpleasant and tense with a lot of anger between them. The affiant also stated that the petitioner complained to him privately that L-L- had a habit of disappearing from the house for days and did not tell the petitioner where she had gone. The affiant further stated that after they stopped going out together, the petitioner told him that he was going to divorce L-L- because she was going to have a child with another man.

As noted above, the director denied the petition on August 27, 2009 determining that the record did not support a determination that the petitioner had suffered battery or extreme cruelty at the hands of his former spouse.

The petitioner in a September 23, 2009 affidavit submitted on appeal notes that he did not keep a diary of the specific dates his former spouse engaged in acts of extreme mental cruelty, but that he does recall that on numerous occasions she would call him names, she would say that she made a mistake in marrying him, that she could find a much better man than him, and that she would refuse to go out with him because she did not like his company. The petitioner notes that L-L- would speak to him in a loud and disrespectful manner in front of his family and friends and that on one occasion she threw his clothes out of the window of the apartment he was paying for. The petitioner also reiterates that L-L- would go missing for many days and then she would loudly refuse to tell him where she had been. The petitioner states that when he found out she was pregnant, her adultery and deception were the final straw and he could not take it anymore. The petitioner states that these incidents caused him great mental pain and that the loudness and humiliation of the acts made him embarrassed in front of people.

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. The petitioner has noted his feelings regarding his former wife's infidelity and name calling, but as the director found, infidelity and name calling are not considered extreme cruelty as set out in the regulations. The petitioner has not established that his former wife's infidelity constituted psychological or sexual abuse or was otherwise part of an overall pattern of violence. Similarly, although the name calling was hurtful and caused him embarrassment, as generally described, L-L-'s actions, while maybe unkind and inconsiderate, 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 claims made by the petitioner fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that L-L-'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. 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 statement of the petitioner's friend and his brother but finds that the generality of the statements and the bareness of detail are insufficient to establish that the petitioner was the victim of battery or extreme cruelty at the hands of his former wife. Although the petitioner

was subjected to name calling and had his clothes thrown out of a window on one occasion, the petitioner has not established that these acts are more than evidence of the turmoil of a dysfunctional marriage.

Accordingly, we concur 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, we find 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 United States citizen and is eligible for immediate relative classification based on a qualifying relationship with his former wife. An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 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 February 6, 2007 and he filed the instant Form I-360 on September 19, 2007. 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 United States citizen, and is eligible for immediate relative classification based on a qualifying relationship with his former wife,

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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