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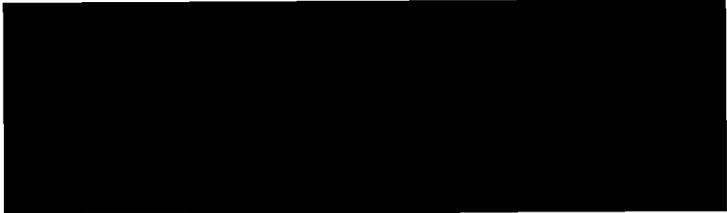
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B9



FILE: [REDACTED]  
EAC 08 024 50714

Office: VERMONT SERVICE CENTER

Date: **MAR 04 2010**

IN RE: [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:



**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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the immigrant visa petition and 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 on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty. The petitioner submitted a timely appeal on April 15, 2009.

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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 petitioner is a citizen of Lebanon who married C-H,<sup>1</sup> a citizen of the United States, on October 20, 2006. C-H- filed Form I-130, *Petition for Alien Relative*, on behalf of the petitioner on November 15, 2006. The petitioner filed Form I-485, *Application to Register Permanent Residence or Adjust Status*, on that same date. The Forms I-130 and I-485 were denied on April 4, 2008.

The petitioner filed the instant Form I-360 on October 26, 2007. On November 5, 2007, the director issued a request for additional evidence (RFE), and requested additional evidence to establish that the petitioner is a person of good moral character. The petitioner responded on December 31, 2007 and submitted additional evidence. On November 13, 2008, the director issued a second (RFE), which advised the petitioner of deficiencies in the record and afforded him the opportunity to submit additional evidence to establish that he was subjected to battery or extreme cruelty by C-H-. The petitioner responded on January 26, 2009, and submitted additional evidence. After considering the evidence of record, the director denied the petition on March 16, 2009.

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<sup>1</sup> Name withheld to protect individual's identity.

### **Battery or Extreme Cruelty**

The sole issue on appeal is whether the petitioner has established that C-H- subjected him to battery and/or extreme cruelty. As noted by the director in his March 16, 2009 decision, at the time the petition was filed, the petitioner submitted evidence that C-H- had an extramarital affair; became pregnant as a result of the affair; and married the father of her child, in Lebanon, despite being married to the petitioner. In response to the director's second RFE of November 13, 2008 the petitioner submitted evidence that his quality of life had changed since the relationship ended. However, the director, found that the petitioner's submissions failed to establish that he had been the victim of battery or extreme cruelty.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny this petition.

When he filed the petition, the petitioner submitted a self-affidavit, an affidavit from his father, and four affidavits from friends in support of his claim to have been abused by C-H-. In his September 27, 2007 self-affidavit, the petitioner stated that, on November 2, 2006, two weeks after the couple's October 20, 2006 wedding, C-H- visited Lebanon. Shortly after her arrival, her father was involved in a very serious automobile accident, and C-H- remained in Lebanon for an extended period of time in order to run her family's business. According to the petitioner, when he visited C-H- in Lebanon in April 2007, she was very distant, and rejected him sexually most of the time. A few days after his return to the United States, C-H- told the petitioner by telephone that she had been pregnant with the child of another man since February 2007, that she was marrying the father of the child, and that her church did not recognize her civil marriage to the petitioner. He stated that he lost all confidence in himself, and that he spent one month in hell.

In his September 20, 2007 affidavit, the petitioner's father stated that he learned that C-H- began her extramarital affair before Christmas 2006, learned she was pregnant in February 2007, and believed she had no choice but to marry the father of the child. He noted that C-H-'s religion did not recognize her civil marriage in the United States to the petitioner as valid.

In his August 25, 2007 affidavit, [REDACTED] stated that C-H- and the petitioner were the perfect couple; that they were very happy together; and that he is not sure what really happened. In his September 1, 2007 affidavit, [REDACTED] stated that C-H- and the petitioner lived together happily, and that they were the perfect couple. In his undated affidavit, [REDACTED] stated his confusion as to why C-H- behaved as she did; stated that the petitioner does not feel well; and stated his concern that the petitioner may never recover from his shock. In her September 3, 2007 affidavit, [REDACTED] stated that the petitioner is still suffering as a result of C-H-'s actions, and that he will not be able to recover in the near future.

Upon notification via the director's November 13, 2008 RFE that the record of proceeding was insufficient to establish the petitioner's claim to have been abused, the petitioner submitted additional affidavits and letters from medical personnel.

In his December 17, 2008 affidavit, [REDACTED] stated that he witnessed C-H- verbally and physically abusing the petitioner. He also testified to the petitioner's depression. In his December 17, 2008 affidavit, [REDACTED] testified to the petitioner's depression upon learning of C-H-'s infidelity and marriage, and [REDACTED] testified to the same in her December 11, 2008 affidavit.

The petitioner submitted three letters from medical personnel in response to the director's second RFE. In his undated letter, [REDACTED] stated that the petitioner exhibited symptoms consistent with peptic ulcer disease, and that he is receiving treatment with multiple medications. [REDACTED] recommended that the petitioner avoid stressful events.

In his December 29, 2008 letter, [REDACTED] stated that the trauma caused by C-H-'s extramarital affair and subsequent pregnancy and marriage caused the petitioner to experience a deep depression.

Finally, the petitioner submitted a psychological evaluation from [REDACTED], which was based upon an interview conducted by [REDACTED] on November 26, 2008. In his November 28, 2008 letter, [REDACTED] recounted the petitioner's testimony with regard to C-H-'s extramarital affair, the resulting pregnancy, and subsequent marriage. [REDACTED] diagnosed the petitioner with a Major Depressive Disorder.

As noted, the director found that the record did not establish that the petitioner had been subjected to battery or extreme cruelty by C-H- and denied the petition on March 16, 2009. On appeal, counsel submits information regarding Major Depressive Disorder and Major Depressive Episode. With the exception of the information counsel submits from Wikipedia,<sup>2</sup> the AAO has read and considered each of the printouts submitted by newly-retained counsel. Counsel also resubmits

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<sup>2</sup> Wikipedia's introduction page states, in pertinent part, the following:

**How can I contribute?**

**Don't be afraid to edit** – *anyone* can edit almost any page, and we encourage you to **be bold!** Find something that can be improved and make it better – for example, spelling, grammar, rewriting for readability, or removing unconstructive edits [emphasis in original]. . . .

Remember, you can't break Wikipedia; all edits can be reversed, fixed, or improved later. . . .

See <http://en.wikipedia.org/wiki/Wikipedia:Introduction> (accessed February 1, 2010).

As any individual who wishes to write for or edit Wikipedia may do so, regardless of his or her expertise or qualifications, the AAO does not consider counsel's citation to Wikipedia reliable, and counsel's printout from Wikipedia will be accorded no evidentiary weight.

several of the affidavits that were submitted previously. The only other new evidence submitted on appeal is an updated letter from [REDACTED] and counsel's appellate brief.

In his May 12, 2009 letter, [REDACTED] reiterates his earlier statement that the petitioner suffers from Major Depressive Disorder, and adds that "there are elements" of Post Traumatic Stress Disorder. In his brief, counsel argues that C-H-'s actions constitute extreme cruelty, as that term is defined in the regulation.

The petitioner has failed to demonstrate that the actions of C-H- constituted battery or extreme cruelty. As a preliminary matter, the AAO finds that the letters from [REDACTED], and [REDACTED] deficient. Neither [REDACTED] nor [REDACTED] indicates when he began seeing the petitioner or how many times he has seen him. As the petitioner made no reference to either individual at the time the petition was filed, it appears as though he did not seek treatment for his depression until after the director issued an RFE. With regard to [REDACTED] letter, the AAO notes that his findings were based upon a single interview with the petitioner and, as such, they fail to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering his findings speculative and diminishing the value of his evaluation.

The AAO also notes the testimony of [REDACTED], who stated that he witnessed C-H- verbally and physically abusing the petitioner. Neither the petitioner nor any of his affiants has stated that C-H- physically and verbally abused the petitioner. [REDACTED] testimony, therefore, introduces an inconsistency into the record which has not been resolved, and which undermines the credibility of the petitioner's claim.

At a more basic level, however, the AAO finds that the actions of C-H-, even if taken at face value, (i.e., the adultery, and pregnancy by, and marriage to, another man) do not rise to the level of battery or extreme cruelty, as those terms are set forth in the statute and regulation. With regard to battery, the AAO notes that [REDACTED] is the only individual to make any such allegation and, as such, the AAO will not consider his allegation, particularly considering that the petitioner had not made a similar claim. With regard to extreme cruelty, the AAO finds that C-H-'s behavior fails to rise to that level. The AAO does not dispute that the actions of C-H- as described in the record would have caused a great deal of anguish and trauma to the petitioner. However, as noted by the court in *Hernandez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." The petitioner has failed to establish that C-H-'s actions rose 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. Nor has the petitioner established that C-H-'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 the petitioner. He has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. The petitioner has failed to establish that C-H- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

**Conclusion**

The AAO agrees with the director's determination that the petitioner has failed to establish that his wife subjected him to battery or extreme cruelty. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and this petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.