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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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NOV 09 2010

FILE:



Office: VERMONT SERVICE CENTER Date:

IN RE:

Petitioner:



PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be 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 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 pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by his United States lawful permanent resident spouse.

On April 20, 2010, the director denied the petition, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his lawful permanent resident spouse.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful permanent resident 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 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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:

(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)(B)(ii) 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 Venezuela. He entered the United States on or about March 7, 1993 with a B-2 visa. On February 27, 2008, the petitioner married C-V-¹, the claimed abusive United States lawful permanent resident. On March 3, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On the Form I-360, the petitioner indicated that he had resided with C-V- from March 2008 to January 2009.

Abuse

In the petitioner's January 29, 2009 personal statement, the petitioner declared: that two or three months after his marriage to C-V-, every time they went out C-V- would cause scenes in front of friends so he made the decision not to go out in groups; that she slapped him once in front of his sister; and that she pushed him once causing him to fall on his back which caused a "strong pain." The petitioner indicated that he still sees a doctor for therapy for this injury. The petitioner also

¹ Name withheld to protect the individual's identity.

reported that C-V- was upset when he bought a new car because she still had to drive a used car; that in December she wanted to file taxes but he had not received his W-2 Form and she became upset; and in January she was upset because they had not received the tax refund so she slapped him and picked up her things and left. The petitioner indicated that later C-V- called him and told him that she was going to their bank, so he quickly closed the account. The petitioner reported that hours later she texted him threatening that "she was going to go to the house with two men to confront the situation man to man." The petitioner indicated that he was anxious and desperate about what could happen to him so he called the police and told them what had happened.

The petitioner also submitted a January 17, 2009 affidavit of his sister and brother-in-law who declared: that once C-V- "made a scandal with huge magnitude" at a restaurant and that they had to leave; that once when the couple came to their house for dinner, C-V- became upset, started to scream and left and they had to take the petitioner home; and that the petitioner told them that C-V- had attacked him physically by pushing him hard against the wall of the bathroom. The affiants further declared that "last Tuesday" the petitioner called to tell them that C-V- had slapped him twice and had yelled bad words at him and that C-V- left.

The petitioner further submitted an undated declaration from a second sister who declared: that C-V- was jealous; that once when she was visiting their apartment, C-V- began to argue, that she screamed and insulted the petitioner, that she pushed him, and went to her room screaming and locked herself in; that C-V- wanted the petitioner to buy her a car and that is what most of the arguments were about; that C-V- argued with the petitioner in the middle of a restaurant and then left and they were embarrassed because people continued to stare at them; and that on Tuesday, January 13, the petitioner called her and told her he had an incident with C-V- and had called the police and that later C-V- picked up all her things and left.

The initial record also included a September 2, 2008 initial evaluation of the petitioner's mid back pain. The chiropractor's [REDACTED] noted that the petitioner: "states that he developed the pain in his mid back and lower back recently." The evaluation and subsequent medical visits do not note the trigger for the onset of the back pain.

The initial record further included a police report of an incident occurring on January 13, 2009 at the petitioner's house. The police officer noted: that s/he responded to a domestic battery call; that the petitioner was the only party on the scene; that the petitioner was calm; that the petitioner reported that he and his wife had an argument about money; and that she slapped him twice on the face and then left. The police officer observed that the petitioner showed no physical signs of injury to his face.

The petitioner also submitted a January 27, 2009² assessment of the petitioner's mental status prepared by [REDACTED] indicated that he had reviewed the petitioner's documents and recited the information provided in the petitioner's January 29, 2009 declaration and

² The assessment is dated January 27, 2008 but the date is later clarified as being January 27, 2009.

the information provided by the petitioner's chiropractor. [REDACTED] also provided information not disclosed by the petitioner in his January 29, 2009 declaration. [REDACTED] indicated that the petitioner stated that his wife insulted and threatened him with calling immigration and that when the couple fought she threatened the petitioner with deportation. [REDACTED] noted that the petitioner identified the "situation with his wife and subsequent USCIS challenge, as the major stressors in his life." [REDACTED] found that the petitioner presented symptoms consistent with Major Depression Disorder and Generalized Anxiety Disorder and that the "subsequent symptomology is the result of the aftermath, of his traumatic abusive relationship with his wife, M-J-S-³ [REDACTED] opined that the petitioner's condition is directly related to the abuse he sustained while married to C-C-P-⁴ [REDACTED] recommended that the petitioner continue psychotherapy and establish medical management for depression.

In response to the director's request for further evidence (RFE) on the issue of abuse, the petitioner provided a January 26, 2010 letter from [REDACTED] clarifying that the date on his initial assessment was a typographical error and should have read January 27, 2009. [REDACTED] also confirmed that the petitioner was present for the evaluation. [REDACTED] provided a second assessment, dated February 5, 2010, in which he provided the same information he noted had been obtained from the petitioner earlier and Dr. Hernandez offered the same conclusions. [REDACTED] also noted that the petitioner had been evaluated by "The Trauma Resolution Center" and had attended group and individual psychotherapy sessions there.

The record in response to the director's RFE also included a letter signed by [REDACTED] a clinical social worker registered intern for "The Trauma Resolution Center." [REDACTED] indicated that the petitioner reported suffering domestic violence while living with his wife and according to the tests administered was suffering from post traumatic stress disorder, depression, and anxiety. [REDACTED] noted that the petitioner had attended four group sessions at the agency in early 2009 and had been assigned to her for individual counseling on April 1, 2009. [REDACTED] noted further that the petitioner attended seven individual sessions for a total of 12 hours and 30 minutes, with the last session being on June 17, 2009, and that tests administered after the completion of his sessions demonstrated his recovery. [REDACTED] added information that the petitioner reported in these sessions, including the petitioner's report that in January 2009 after his wife slapped him in the face twice and left the apartment, she texted him saying that she was going to return and beat him.

The petitioner also provided an initial evaluation amendment, dated January 27, 2010, and signed by [REDACTED] the petitioner's chiropractor, indicating that the petitioner stated that he had developed pain in his mid back and lower back from his wife pushing him down and causing him pain in the mid and low back. The remainder of the medical evaluation is the same as initially submitted. [REDACTED] does not provide an explanation for the amendment and does not indicate

[REDACTED] initial assessment references this individual, not the petitioner's wife, as the perpetrator. There is no explanation for this error.

[REDACTED] references the petitioner's wife by her maiden name.

that he reported the incident to the police or provided counseling information to the petitioner regarding any possible domestic violence.

The record in response to the director's RFE also included a January 15, 2010 affidavit signed by [REDACTED] who declared: that in April 2008 while dining with the petitioner and his wife, C-V- became aggressive when the petitioner did not want to taste her food; that C-V- slapped the petitioner's face a couple of times, screamed at him in an uncontrolled manner, and then left the restaurant; and that they just paid the bill and left because of the bad experience [REDACTED] further stated that C-V- just wanted to humiliate the petitioner all the time. The record also included a second affidavit from the petitioner's second sister amending her previous statement by noting that on January 13 "an hour later [C-V-] packed up all her things and left."

The director determined that the petitioner had not submitted credible evidence demonstrating that he had been subjected to battery or extreme cruelty. The director noted the petitioner's past arrests: (1) January 29, 1996 for assault and battery and disorderly conduct; and (2) April 22, 1996 for lewd and lascivious behavior and indecent exposure, and the petitioner's recent arrest in February 2010 on an outstanding bench warrant.⁵ The director found that the petitioner's testimony and the evidence submitted based on his testimony lacked credibility, as well as supporting evidence, and thus was insufficient to support his claim.

On appeal, counsel for the petitioner asserts that any credible evidence of battery or extreme cruelty may be considered and that a special "any credible evidence" standard applies to all elements of petitions by spouses and children who are subjected to battery or extreme cruelty. Counsel contends that the petitioner's sisters were aware of more serious abuse that happened behind closed doors and it is not required by law that people actually witness the abuse. Counsel asserts that the director improperly determined that the petitioner's testimony was not credible based on his previous arrests as the petitioner had not been convicted of any of the charges except disorderly conduct for the January 29, 1996 incident that happened over 14 years ago. Counsel avers it is preposterous to not consider the evaluations prepared by [REDACTED] because these evaluations were based on the petitioner's testimony. Counsel contends that the director also failed to consider the petitioner's medical record regarding his back pain and the police report filed in January 2009.

Preliminarily, section 204(a)(1)(J) of the Act requires 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 is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, 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" United States Citizenship and Immigration Services (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

⁵ The record includes police reports for these two incidents.

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 director's implication that the petitioner's past arrests undermine his credibility regarding the alleged abuse in this matter is withdrawn. Although the petitioner's past arrests may be considered when determining the petitioner's good moral character, the petitioner's credibility or lack thereof regarding the abuse is not affected by his prior arrests.

Upon review of the record, the petitioner's January 27, 2009 statement does not provide the detailed, probative evidence that establishes eligibility for this benefit. The petitioner generally describes going out with friends and his wife causing scenes. He does not provide a version of events that occurred at a particular restaurant and he does not indicate that his wife slapped him at the restaurant. The petitioner does not provide any of the probative details regarding being slapped in front of his sister. There is no information regarding the circumstances or location of the event. Similarly, the petitioner although indicating that he and his wife argued over filing taxes in late 2008 and January 2009, which eventually caused his wife to leave him, does not include probative detail regarding the argument. Additionally, the petitioner's general detail in the statement appears to conflict with information he conveyed to [REDACTED]. For example, the petitioner generally states that his wife wanted money to send to her mother in Cuba. [REDACTED] reported that the petitioner indicated that his wife wanted his help in getting her sister from Cuba. It is the lack of detail and probative information regarding specific events and incidents that results in an inconsistent picture of the petitioner's relationship with his spouse.

The petitioner also does not provide information in his statement that his wife threatened to call immigration or that she threatened to have him deported. The petitioner's failure to disclose this information in his personal statement to USCIS diminishes the value of the petitioner's alleged statements made to others. In the petitioner's statement he noted that his wife pushed him causing him to fall and hurt his back; and that she threatened that "she was going to go to the house with two men to confront the situation man to man." The petitioner, although indicating in the January 29, 2009 statement that he injured his back as a result of falling after being pushed by his wife, does not provide the necessary probative detail describing the incident. Moreover, the chiropractor initially evaluating the petitioner's back injury does not supply information regarding the cause of the injury. The probative value of an amended version of the evaluation indicating that the injury was caused by the petitioner's fall after being pushed by his wife is diminished, as there is no explanation for the failure to include such significant information in the original evaluation. It appears that the amended version was prepared solely in response to the director's RFE and we question the absence of this information from the original version.

Upon review of the totality of the petitioner's general statement, the statement does not provide the necessary probative detail regarding these incidents to establish that he was subjected to either battery or extreme cruelty.

The statements submitted on the petitioner's behalf also fail to include sufficient consistent, probative information regarding incidents of battery or extreme cruelty. The January 17, 2009 affidavit of the petitioner's sister and brother-in-law, indicates that the petitioner's wife made embarrassing scenes but they do not declare that they witnessed battery or incidents that demonstrate extreme cruelty. Although the petitioner's sister and brother-in-law indicate that the petitioner told them that his wife had pushed him once and that she had slapped him and yelled bad words before leaving him, they do not indicate they witnessed either incident. Similarly, the petitioner's second sister indicated that the petitioner's wife pushed him, that she argued with the petitioner in the middle of a restaurant, and that his wife would scream and insult him. The petitioner's second sister also does not indicate that she witnessed the petitioner's spouse slapping him before she left in January 2009. These events as described do not provide the necessary information to demonstrate that the petitioner was subjected to battery or extreme cruelty perpetrated by his wife.

Upon review of the police report of an incident occurring on January 13, 2009 at the petitioner's house, the police report does not provide probative evidence that the petitioner was subjected to battery. Although the police officer noted the petitioner's statement that his wife had slapped him twice prior to leaving, the police officer indicated that the petitioner was calm and that there was no sign of physical injury to the petitioner. There is insufficient evidence in the police report to demonstrate that the petitioner was subjected to battery.

The statements of the petitioner's relatives and the narrative of the police report do not provide the necessary detail to assist in concluding that the petitioner was subjected to battery or extreme cruelty. It is not just that the affiants and the police officer did not witness several of the events referenced, it is the fact that the petitioner, himself, fails to provide detailed information of the surrounding circumstances of the events and interactions between the couple.

The January 27, 2009 assessment prepared by [REDACTED] does not indicate the number of times or the length of the sessions [REDACTED] had with the petitioner. The lack of information regarding the number and length of sessions with the petitioner precludes a determination that [REDACTED] Hernandez had an established relationship with the petitioner which diminishes the value of his assessment and renders his findings speculative. As noted above, the discrepancies in the petitioner's statement to USCIS and his alleged statement(s) to [REDACTED] also diminish the probative value of the assessment and raise concerns regarding the veracity of the petitioner. The record does not include sufficient consistent probative evidence to support [REDACTED] conclusion that the petitioner's major depression and generalized anxiety disorders are attributable to battery or extreme cruelty as those terms are defined in the statute and regulation.

In [REDACTED]'s report she opines that the petitioner experienced significant traumatic incidents while

living with his wife. However [REDACTED], who relies on the petitioner's testimony, does not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's diagnosis of post traumatic stress disorder, depression and anxiety. [REDACTED] does not detail the underlying trauma or causative factors that support her opinion that the petitioner experienced significant traumatic incidents while living with his wife. In addition to the inconsistency regarding the petitioner's wife's demand for money in January 2009 as observed above, the petitioner told [REDACTED] that his wife texted him saying she was going to return to beat him, while in his January 2009 statement to USCIS, he indicated that his wife texted that she was going to go to the house with two men to confront him.

The inconsistencies in the petitioner's testimony to USCIS and to others when his testimony is already limited and general significantly limit the probative value of the petitioner's testimony. The petitioner does not provide detailed information regarding the circumstances of events sufficient to conclude that his spouse's behavior constituted battery or extreme cruelty. Moreover, the description of the petitioner's spouse's behavior is too general to provide a complete understanding of the circumstances of the petitioner's marital relationship. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9th 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 his spouse'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.

Upon review of the totality of the information in the record, including the petitioner's testimony, statements of others submitted on his behalf, and the assessments of [REDACTED] the record does not provide sufficient probative evidence to demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty. The record does not establish that he was the victim of any act or threatened act of physical violence or extreme cruelty or that his wife'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 record is simply insufficient in consistent probative testimony in this regard. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter has failed to do so.

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