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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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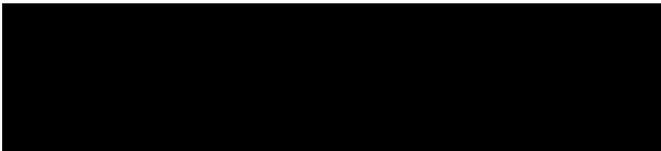
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IN RE:



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:

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 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 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 on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits a letter reasserting the beneficiary's eligibility, and additional evidence.

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, the following:

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 standard and 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, a citizen of Russia, married [REDACTED] a citizen of the United States, on April 4, 2005. He filed the instant Form I-360 on December 14, 2007. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on February 23, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

The sole issue on appeal is whether the petitioner has established that [REDACTED] subjected him to battery or extreme cruelty during their marriage. As evidence that he was subjected to abuse perpetrated by [REDACTED]

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

during their marriage, the petitioner submits three personal statements, two statements from [REDACTED] and statements from [REDACTED] and [REDACTED]

In his December 10, 2007 statement, the petitioner reported that although their marriage began well, [REDACTED] was soon arrested for drug possession and she confessed to the petitioner that she had been abusing illegal drugs for many years. According to the petitioner, [REDACTED] became a different person after she was released from drug rehabilitation following her arrest. He reported that [REDACTED] stopped cooking and cleaning the house; became aggressive; called him names; received a tattoo containing offensive language; stole a shirt from a department store; ridiculed his religion and ethnic heritage; criticized his cooking; ridiculed his sexual performance; and sold his clothing in order to obtain money for drugs. The petitioner also stated that [REDACTED] attacked him with a knife "a few times" and threw beer bottles at him. On another occasion she told the petitioner she was pregnant, even though she was not, in order to play a cruel joke on him.

In his April 24, 2009 statement, the petitioner reported that [REDACTED] abused illegal drugs and encouraged him to do so as well; ridiculed his native country, ethnicity; and religious beliefs; humiliated him; yelled at him; and called him names. The petitioner stated that [REDACTED] had unpredictable moods, and often came home under the influence of drugs and alcohol. Finally, he stated that eventually, cash and personal belongings began disappearing and, when he questioned [REDACTED] as to what was happening, she yelled at him.

In his March 20, 2010 statement submitted on appeal, the petitioner reiterated his earlier assertions and offered additional information. According to the petitioner, on two occasions in 2007 [REDACTED] came home intoxicated and threatened him with a knife, but he was able to take it away. The petitioner also stated that when [REDACTED] informed him that she was not pregnant, after previously telling him she was, she caused him a great deal of pain.

In her April 24, 2009 affidavit, [REDACTED] stated that the petitioner told him that [REDACTED] took drugs and abused him. He stated that [REDACTED] and the petitioner eventually stopped joining his family for holiday celebrations, and that the petitioner became depressed. In his March 14, 2010 letter, [REDACTED] stated that the petitioner became isolated and unsociable due to [REDACTED] treatment. He stated that although he offered to pay for the petitioner to see a psychiatrist, he refused, stating that God had forgotten him.

In her April 20, 2009 letter, [REDACTED] stated that the petitioner told her that [REDACTED] abused drugs; humiliated him; cursed at him; and threatened him with a knife. She stated that [REDACTED] became silent and unsociable, and lost interest in life. [REDACTED] also stated that [REDACTED] tricked the petitioner by telling him she was pregnant when she was not, which shocked and depressed him,

In his April 20, 2009 letter, [REDACTED] stated that the petitioner told him that [REDACTED] humiliated him and called him names; came home intoxicated; and was arrested for drug possession. [REDACTED] also stated that the petitioner appeared to be very depressed the last time he saw him.

On appeal, counsel contends that the troubles between [REDACTED] and the petitioner went beyond simple marital discord, marital tensions, and marital incompatibilities. According to counsel, the petitioner was the victim of both battery and extreme cruelty perpetrated by [REDACTED]

The AAO has reviewed the entire record and finds that when considered in the aggregate, the relevant evidence fails to establish that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage. Although the petitioner and his affiants claims that [REDACTED] attacked him with a knife and threw beer bottles at him, the testimonial evidence of record lacks sufficiently detailed testimony providing probative details regarding specific instances of such knife and bottle attacks. The petitioner has not established that he was subjected to battery perpetrated by [REDACTED]

Nor does the record demonstrate that [REDACTED] non-physical behavior constituted extreme cruelty. Although that behavior as described by the petitioner may have been unkind and inconsiderate, he has failed to establish that her actions were comparable to the types of 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 [REDACTED] behavior was accompanied by other coercive actions or that her behavior was aimed at insuring dominance or control over him. As noted by the Ninth Circuit Court of Appeals, “[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness.” *See Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

The petitioner has failed to establish that [REDACTED] subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain 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.