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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

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B9

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

NOV 29 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:

[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 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 Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen.¹ The motion will be granted. The appeal will be dismissed and the petition will remain 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 his United States citizen spouse.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that his ex-wife subjected him to battery or extreme cruelty. On motion, counsel submits a brief reasserting the petitioner's eligibility, and additional testimonial evidence.

Applicable Law

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,

¹ Counsel refers to his submission as an "appeal." However, because the regulations contain no provision for the appeal of a decision issued by the AAO, we will refer to counsel's submission as a motion to reopen since it meets the requirements of such a motion as set forth at 8 C.F.R. § 103.5(a)(2).

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of the Netherlands, entered the United States as an H-1B nonimmigrant worker on June 14, 2003. He married S-H,² a citizen of the United States, on August 7, 2003. They divorced on March 15, 2007. The petitioner was placed in removal proceedings and on December 18, 2009, an

² Name withheld to protect individual's identity.

Immigration Judge granted the petitioner cancellation of removal and the case remains pending before the Board of Immigration Appeals.

The petitioner filed the instant Form I-360 on November 26, 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 August 13, 2009. Although counsel filed a timely appeal, the AAO summarily dismissed the appeal on May 3, 2010 because counsel failed to specifically identify any erroneous conclusion of law or statement of fact made by the director in his August 13, 2009 decision. Counsel filed the instant motion to reopen in a timely manner, and submits a brief reasserting the petitioner's eligibility and additional testimonial evidence.

The AAO reviews these proceedings *de novo*. 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 not overcome the director's ground for denying this petition.

Discussion

The sole issue before the AAO on motion to reopen is whether the petitioner has established that S-H- subjected him to battery or extreme cruelty during their marriage. In his April 29, 2009 self-affidavit, the petitioner stated that S-H- and her mother went gambling every day, and asked him for money to support their habits. The petitioner stated that he and S-H- initially lived with her parents, and that during this time her mother ridiculed his heritage; opened his mail; asked him to clean the house, pool, and yard; and disrespected him in front of his friends. The petitioner explained that after he and S-H- moved out of her parents' home, he was not permitted to go to bed when S-H- had family members at their home, which happened at least four nights each week, no matter how tired he was, because doing so is considered rude in her culture. The petitioner also stated that he spent a great deal of money on S-H-'s family. According to the petitioner, he was not welcome in the Mediterranean restaurants and clubs S-H- frequented because he did not speak her language. He also stated, however, that he was forced to spend his birthday in a Lebanese establishment with S-H-'s family, and was also expected to spend Christmas and New Year's Eve with them. Eventually, S-H- had an extramarital affair and, after he moved from the home, he had to pay her for his employment authorization card and other mail. When debts were being divided during the divorce proceedings, S-H- told the petitioner that if he did not assume all jointly-held credit card debt, as well as a loan her mother obtained when refinancing her home mortgage, the Lebanese community would "take care of" him.

In his December 14, 2009 self-affidavit submitted on motion, the petitioner repeated his earlier assertions and added that S-H- was very jealous and checked his telephone messages and e-mails; treated him like a slave by making him iron clothes and cook, clean, and paint the house; hid his car keys so that he could not leave the house; ridiculed him for not being able to speak her language; questioned his sexual orientation; called him names; stole money from him; screamed at him when he hid money from her; threw an alarm clock at him; threw a vase at a wall; forbade him from having non-Lebanese friends; told him that his parents did not raise him well; was moody and aggressive;

kissed another man; stabbed him with a knife; threw a computer on the floor; used his student loan money to buy a new computer and gamble; bit him; made unreasonable sexual demands; hit him; threw things at him; took things out of his pockets; and did not allow him to call his friends. The petitioner stated that he lost 45 pounds as a result of his stressful situation, and that he hated his own home.

The petitioner also submits a letter from [REDACTED] who stated that he has been treating the petitioner for uncontrolled high blood pressure, severe depression, and anxiety. [REDACTED] stated that the petitioner's marriage "did involve physical violence as severe mental torture," but Dr. [REDACTED] provided no detailed probative information regarding any incident of physical or psychological abuse.

The record also contains what the petitioner claims to be a printout of a March 12, 2007 e-mail from S-H-. In this e-mail, S-H- tells the petitioner she is sorry that the marriage did not work; that she was going through many issues which prevented her from being a good wife; that her gambling problem caused many problems; and that she is sorry her mother treated him so badly.

In her April 28, 2009 affidavit, Lourdes Lincoln stated that because S-H- did not like the petitioner having female friends, especially non-Lebanese females, the petitioner began avoiding her phone calls to him. She also stated that S-H- took money from the petitioner's bank account and gave it to her mother and had an extramarital affair. [REDACTED] also stated that S-H-'s mother did not like the petitioner, and that she introduced many other men to S-H-. She also stated that S-H- and her mother gambled frequently, and asked the petitioner for the money to do so; ridiculed his culture; and were generally embarrassed by the petitioner. According to [REDACTED] the petitioner's self-esteem "went downhill" as a result of S-H-'s maltreatment.

In his April 28, 2009 affidavit, [REDACTED] stated that although he frequently met the petitioner for drinks before he married S-H-, the petitioner was no longer permitted to do so after the wedding because S-H- and her mother did not trust the petitioner. [REDACTED] also stated that the petitioner told him that S-H- and her mother gambled frequently, and that they were always asking him for money. [REDACTED] stated that the petitioner was bankrupt, derailed professionally, and psychologically distressed as a result of S-H-'s maltreatment.

In his April 29, 2009 affidavit, [REDACTED] stated that after the petitioner married S-H-, they did not speak often. He stated that S-H- and her mother visited casinos every day and that they did not like the petitioner's friends. According to [REDACTED], the petitioner also told him that S-H- criticized the petitioner constantly and ridiculed his culture.

The AAO has reviewed the entire record and finds that when considered in the aggregate, the relevant evidence fails to establish that S-H- subjected the petitioner to battery or extreme cruelty during their marriage. When the petitioner filed the petition, his description of S-H-'s maltreatment focused primarily on financial issues; as well as her criticisms of his culture, language, and religion; infidelity; and her family's use of the petitioner to perform household tasks. However, on motion

the petitioner's description of the abuse to which he was allegedly subjected expanded to include jealousy and control; questioning his sexual orientation; theft; and physical abuse including hitting, biting, throwing things at him, and stabbing him with a knife. The petitioner did not explain the significant differences between his earlier and later accounts of the abuse. The unexplained differences between the petitioner's pre- and post-denial descriptions of the abuse diminish the probative value of the petitioner's testimony regarding the alleged abuse. The statements by the petitioner's affiants do not resolve these inconsistencies, as they are based primarily on the petitioner's account of events. While we do not question the professional qualifications of [REDACTED] his letter lacks probative, detailed information regarding specific incidents of abuse and does not establish that the petitioner was abused by S-H-. The petitioner, therefore, has failed to establish that he was subjected to battery or extreme cruelty by S-H- during their marriage.

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 (9th 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 S-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 petitioner has failed to overcome the ground for denial, and has not established that S-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. 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, and the director's decision denying the petition will be affirmed.

ORDER: The motion is granted. The appeal is dismissed.