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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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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 06 2010

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:

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 a fee of \$585. 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)(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.

On May 21, 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 United States citizen spouse. Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a psychosocial report prepared June 2, 2010 in support of the appeal.

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 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 the Republic of Trinidad and Tobago. He arrived in the United States in September 1999. On [REDACTED] the petitioner married A-B-<sup>1</sup>, his second wife. On or about February 8, 2008, A-B- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and the petitioner concurrently filed a Form I-485, Application to Register Permanent Resident or Adjust Status. On May 1, 2008, United States Citizenship and Immigration Services (USCIS) approved the Form I-130. The petitioner's Form I-485 was denied on May 1, 2008. On June 15, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On the Form I-360, the petitioner indicated that he had resided with A-B- from April 2007 to November 2008.

*Abuse*

The petitioner initially failed to provide any information or evidence demonstrating that he had been subjected to battery or extreme cruelty perpetrated by A-B-. In response to the director's request for further evidence on this subject, counsel for the petitioner submitted three affidavits prepared on behalf of the petitioner. In a March 18, 2010 affidavit signed by [REDACTED] on April 3, 2010, [REDACTED] declared that he had been present and witness to verbal abuse towards the petitioner by

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

A-B- [REDACTED] indicated that on one occasion when he and his wife had dinner with the petitioner and A-B-, A-B- yelled at the petitioner, threatened to call immigration on him, and cursed at him which drew attention to the table and was very embarrassing. [REDACTED] indicated further that A-B-'s behavior and outburst caused him to limit his contact with the petitioner and A-B-. In a March 26, 2010 affidavit signed by [REDACTED] declared that she had been a witness to verbal abuse towards the petitioner by his wife whereby his wife threatened to call the police and immigration on him. [REDACTED] further noted that the petitioner seemed distant and unsure of himself compared to the confident person she had known in the past. In an affidavit signed by [REDACTED] on April 1, 2010, [REDACTED] declared that he been a witness to verbal abuse by A-B- towards the petitioner.

Counsel for the petitioner also submitted a February 24, 2010 evaluation prepared by [REDACTED], licensed mental health counselor. As the director observed, the evaluation focused on the impact the petitioner's deportation would have on his two children. [REDACTED] noted that the petitioner had a traumatic marital experience with A-B- and did not know about her disengagement and abusive and abandoning attitudes, but [REDACTED] did not provide an assessment that demonstrated that the petitioner had been subjected to battery or extreme cruelty by A-B-.

Upon review of the record, including the deficiencies of the February 24, 2010 evaluation, as well as the general statements provided by three individuals on the petitioner's behalf, the director denied the petition.

On appeal, counsel for the petitioner submits only one additional document, a psychosocial report prepared by [REDACTED], a licensed clinical social worker, with a doctorate degree in psychology. [REDACTED] indicates that the report was prepared on June 2, 2010 and was based on one interview of unspecified length on June 2, 2010 and the evaluation prepared by [REDACTED] dated February 24, 2010. [REDACTED] indicates that the petitioner reported: that A-B- had refused to attend an immigration interview and perhaps misplaced the petitioner's passport to delay the immigration process; that A-B- threatened to call the police or the Department of Homeland Security to have the petitioner arrested or detained, or to advocate for his immediate deportation; that A-B- refused to attend marital counseling; that the petitioner suspected that A-B- was having an affair; that on several occasions A-B- threw objects at the petitioner, tried to hit him and start a physical altercation, and once slapped his face and once slapped him on the neck; and that on one occasion A-B- kicked the petitioner out of the house and caused him to sleep outside the entire night. [REDACTED] also noted that the petitioner reported: that A-B- did not pick up his children on several occasions; that she returned home late at night or stayed out all night; that A-B- cursed and called the petitioner disgusting expletives with a vindictive tone; and that the petitioner suffered from emotional abuse including mental cruelty, isolation, taunting, degradation, demeaning actions, and teasing. [REDACTED] noted that the petitioner reported: that he was made to feel isolated in his own home; that he was both the financial supporter and attended to the physical needs of the home; and that A-B- did not support his involvement in church. [REDACTED] indicates that the petitioner's presentation is consistent with Major Depressive Disorder, NOS and Posttraumatic Stress Disorder and that the petitioner's psychosocial issues are spousal abuse and immigration. [REDACTED] concludes that the petitioner

suffered physical, sexual, emotional, verbal, and other abuses and now suffers from posttraumatic stress disorder and depression as a result.

Upon review of the record, the AAO concurs with the director's determination on this issue. The petitioner has not provided any probative evidence that he was subjected to battery or extreme cruelty perpetrated by his spouse. The AAO notes that the petitioner has not provided a personal statement detailing specific instances of battery or extreme cruelty. The only information in the record reportedly from the petitioner regarding the claimed abuse is the petitioner's statement to [REDACTED] on June 2, 2010. Upon review of the petitioner's statements as reported to [REDACTED], the AAO finds that the petitioner fails to disclose a chronological timeline of specific instances of either battery or extreme cruelty and furthermore refers only generally to various incidents. The information the petitioner provided to Dr. Silver is without the necessary detail to determine whether the petitioner was subjected to battery or extreme cruelty as defined by the statute and regulation.

The affidavits submitted on the petitioner's behalf, speak generally of arguments that involve A-B-threatening to the call the police or immigration. The affidavits do not provide the necessary detail of the circumstances or interactions that resulted in the claimed verbal threats. There is nothing in the record that evidences in probative detail that A-B- threatened the petitioner with deportation. The petitioner's lack of information on this subject, along with the general statements made on his behalf, are insufficient to establish that the petitioner was subjected to specific verbal threats regarding his immigration status.

Upon further review of the report prepared by [REDACTED], the only information in the record regarding the claimed circumstances of the petitioner's marriage to A-B-, the AAO finds again that the information provided is too general to provide a complete understanding of the circumstances of the petitioner's marital relationship. The petitioner has not provided probative information substantiating that he was subjected to incidents of battery or extreme cruelty as set out in the statute and regulation. As noted by the court in *Heranadez 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. . . ." In this matter, the petitioner has failed to establish that A-B-'s actions 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 petitioner's statements provided to [REDACTED] do not demonstrate that he was the victim of any act or threatened act of physical violence or extreme cruelty or that A-B-'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 this regard.

The AAO acknowledges [REDACTED]'s opinion that the petitioner suffers from depression and post traumatic stress disorder. The AAO observes, however, that [REDACTED]'s report was based upon a single interview with the petitioner and an evaluation prepared by another individual who did not list any of the claimed abuses noted by [REDACTED]. While we do not question [REDACTED]'s professional

training and experience, the report, which is based on such limited information, fails to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, and renders his findings speculative and diminishes the value of his evaluation. In addition, [REDACTED] does not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's depression and post traumatic stress disorder. Further, the generally described information reported by the petitioner to [REDACTED] does not include actions that constitute battery or extreme cruelty under the statute and regulation. The petitioner's vague references to threats, to derogatory name calling, to throwing things and to slapping him on two occasions are without the necessary detail of the circumstances of those incidents. Thus, there is insufficient information to conclude that any of those actions constitute battery or extreme cruelty as described in the statute and regulation.

When evaluating the record as a whole, the AAO finds the record lacks information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The record includes generic information and a lack of detailed instances of the claimed abuse. The AAO is aware of the difficulties of obtaining information to establish eligibility for this benefit; however, the petitioner must provide 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, he has failed to do so. The petitioner in this matter has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by his former spouse.

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