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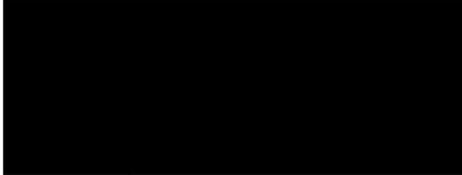
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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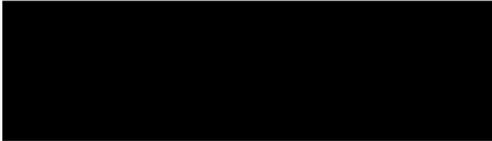
OCT 06 2010

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, 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 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, and counsel filed a timely appeal. On appeal, counsel submits a brief.

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, a citizen of Thailand, married A-B,<sup>1</sup> a citizen of the United States, on June 23, 2008. He filed the instant Form I-360 on April 7, 2009. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the director's request for additional evidence, the director denied the petition on April 27, 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 affirms the director's determination that the petitioner has failed to establish that he was subjected to battery and/or extreme cruelty by A-B during their marriage.

**Battery or Extreme Cruelty**

The sole issue before the AAO on appeal, and the sole ground for the director's denial of the petition, is whether the petitioner has established that A-B- subjected him to battery or extreme cruelty during their marriage. The petitioner submitted his own testimony and that of a friend, as

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

well as a compact disc containing a recording of a voice-mail message from A-B-, in support of his claim.

The petitioner described the abuse to which he was allegedly subjected in his March 24, 2009 statement. The petitioner stated that by August 2008, two months after their wedding, A-B- was spending a great deal of time with her friends and coming home intoxicated. The petitioner stated that A-B- stayed out late and quit spending time with him; flirted with other men; told him he was boring and called him names; accused him of being unfaithful; threatened his immigration status, and refused to proceed with his immigration paperwork unless he paid her; threatened to file a false report of domestic violence; and ridiculed his sexual performance. Because she stayed out so late and sometimes did not return home after a night out with friends, the petitioner stated that he eventually asked A-B- to call him when she would not be coming home. In response, A-B- embarrassed him by having a man call the petitioner to tell him that she would not be coming home that night.

The petitioner described two incidents in detail. The first incident occurred when A-B- came home early one evening, and found the petitioner watching television with a female friend. According to the petitioner, A-B- became jealous, accused him of cheating, and threw a television remote control in his direction which hit his printer. She also pushed the petitioner's friend and called her names. The second incident occurred one evening after the petitioner came home from work to discover that A-B- had brought 15-20 people into the house. They petitioner and A-B- argued and, after the petitioner called A-B- an irresponsible child and turned to leave, A-B- threw a beer bottle in his direction which hit the wall and she called him a racist name. The petitioner stated that following this incident A-B- told him that she would only continue sponsoring his immigration proceedings if he paid her \$5,000. A-B- moved out of the house a few days later, and began leaving threatening voice-mail messages for the petitioner in which she demanded payment for her continued sponsorship of his permanent residency petition. The petitioner stated that she sometimes called five to ten times per night, and that she threatened to have him beaten.

In her March 26, 2009 letter, [REDACTED] the petitioner's friend with whom A-B- discovered him watching television, and with whom A-B- accused the petitioner of having an extramarital affair, stated that the petitioner often spoke to her about his marital problems. [REDACTED] echoed the petitioner's description of the events that transpired on the night A-B- accused her of having an extramarital affair with the petitioner. [REDACTED] stated that she and the petitioner were watching a movie together when A-B- came into the house. She was intoxicated, and began yelling at [REDACTED]. [REDACTED] stated that A-B- told her to leave the house and never come back; called her names; and accused her of having an affair with the petitioner. [REDACTED] stated that A-B- pushed her, and threw an object at the petitioner.

The petitioner also submitted a compact disc containing a recording of a voice-mail message that A-B- left for the petitioner. In the recording submitted by the petitioner, A-B- told the petitioner to call her because she was going to withdraw "the application" the following morning, and that he had until that time to reach her.

In his June 23, 2010 brief, counsel contends that the petitioner was subjected to multiple acts of violence. Counsel submits a link to an article describing an incident during which a woman was killed after being hit by a remote control and states that throwing a beer bottle “is nothing short of assault with a deadly weapon.” Counsel also contends that the petitioner was subjected to extreme cruelty. In support of his argument, counsel states that the petitioner was publicly humiliated and degraded by A-B-; that she psychologically abused him; and that she attempted to control him by throwing things at him, threatening him with violence, threatening to file a false claim of spousal abuse, and threatening to have him deported.

The AAO has reviewed the entire record and finds that, in sum, the relevant evidence fails to establish that A-B- subjected the petitioner to battery or extreme cruelty during their marriage. First, the petitioner’s description of the circumstances surrounding the incidents during which A-B- allegedly threw a remote control and a beer bottle does not establish that he was the victim of battery perpetrated by A-B-. Nor does the record demonstrate that A-B-’s behavior constituted extreme cruelty. The petitioner 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, for example, forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that A-B-’s behavior was part of an overall pattern of violence. While the petitioner states that A-B- threatened him if he did not pay her to help him get a “green card,” his statements do not demonstrate that her threats amounted to coercion or that she was able to control the petitioner through such threats. As the petitioner explained, he did not pay A-B- and stopped answering her calls. 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 A-B- 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**

On appeal, the petitioner has failed to overcome the director’s ground for denial and has not established that he was abused by A-B- during their marriage. 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 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.