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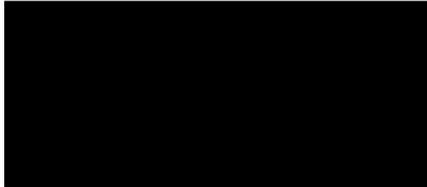
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



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Office: VERMONT SERVICE CENTER Date:

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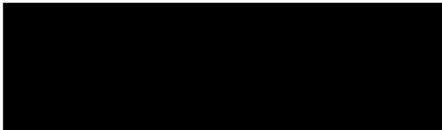
IN RE:

Petitioner:



PETITION: Petition for Immigrant Battered 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 Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal and a motion to reopen or reconsider its previous decision. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted to consider the February 23, 2009 declaration of C-D-¹. The previous AAO decisions to deny the petition will be affirmed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 April 1, 2008. The director determined that the petitioner had failed to establish: (1) that he is not subject to the provisions of section 204(g) of the Act; (2) that he has a qualifying relationship with a United States citizen; (3) that his wife subjected him to battery or extreme cruelty; and (4) that he entered into marriage with his wife in good faith. Counsel filed a timely appeal.

The AAO dismissed the petitioner's appeal on February 10, 2009. The AAO withdrew the director's findings with regard to the existence of a qualifying relationship, but affirmed the director's findings that the petitioner had failed to establish: (1) that he is not subject to the provisions of section 204(g) of the Act; (2) that his wife subjected him to battery or extreme cruelty; and (3) that he entered into marriage with his wife in good faith. Counsel timely filed a motion to reopen and reconsider the AAO's February 10, 2009 decision.

On August 4, 2009, the AAO dismissed the petitioner's motion to reopen determining that the petitioner had not submitted new facts supported by affidavits or other documentary evidence as a basis to reopen the prior decision. The AAO observed that the February 23, 2009 declaration of the petitioner's wife, C-D-, and a journal article dated February 9, 2002 could not be considered new as this evidence was either previously available and could have been discovered or presented in the previous proceeding, or post-dated the petition. The AAO granted the petitioner's motion to reconsider and adjudicated the motion to reconsider, ultimately determining that the petitioner had not presented reasons for reconsideration supported by pertinent precedent decisions that were sufficient to overcome the AAO's February 10, 2009 decision. Counsel timely submits a Form I-290B, indicating that he is filing a motion to reconsider the previous decision.

On this second motion to reconsider, counsel for the petitioner asserts that the petitioner's wife's (C-D-) declaration submitted in the previous motion to reopen was new evidence and should have provided a basis to reopen the AAO's February 10, 2009 decision. Counsel states that C-D-'s declaration was not previously available and explains that: (1) after the petitioner and C-D- separated and no longer lived together in November 2006, they had no communication with one another; (2) when the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, he submitted the evidence he had at his disposal at that time; (3) in January of 2009, the petitioner's wife sought the petitioner out to see how he was doing and the couple began to have contact and communications again; and (4) during the subsequent conversations, the petitioner's wife made it known that she could testify as to what happened during their marriage on his behalf. Counsel failed to provide such an explanation for the late

¹ Name withheld to protect the individual's identity.

submitted February 23, 2009 declaration signed by C-D- in the first motion to reopen; however, the AAO will reopen the matter for the express purpose of examining the February 23, 2009 declaration signed by C-D-. The AAO incorporates by reference its previous February 10, 2009 decision and its August 4, 2009 decisions in all other respects.

In the February 23, 2009 declaration, on the issue of abuse, C-D- declared: that because of her depression she would act out in anger directed at the petitioner; that she did insult her husband and would blurt out things like, he was nothing more than an illegal immigrant and that he was good for nothing, and that on occasion she would say "that he should be deported back to Guatemala"; that on October 22, 2006, she became hostile with the petitioner when he came home from work, and that although she cannot remember the details, she recalls it was an unpleasant episode for both of them; and that at the end of November 2006, the petitioner discovered her in bed with another man.

Upon review of C-D-'s declaration, she does not reference any episode of battery against the petitioner. Although the petitioner stated in his January 29, 2007 affidavit that C-D- threw dishes at him, which resulted in cuts and bruises, C-D- does not reference this specific incident. C-D- also does not declare that she threatened the petitioner by stating that she would call immigration on him or that she would have him deported. The petitioner's wife's recollection of an unpleasant episode occurring on October 22, 2006 does not assist in demonstrating that she subjected the petitioner to battery and further she provides no explanation why she would recall "an unpleasant episode" on a specific date but not recall further details. There is nothing in C-D-'s declaration that supports a conclusion that she subjected the petitioner to battery.

Similarly, the petitioner's wife's declaration does not provide evidence that she subjected the petitioner to extreme cruelty. Although C-D- confirmed that she was unfaithful to the petitioner, infidelity does not constitute extreme cruelty as defined in the statute and regulation. Further, although C-D- acknowledges arguing with the petitioner, insulting him with derogatory names, and telling him that he should be deported back to Guatemala, the behavior she generally describes is not behavior that constitutes extreme cruelty. 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 information in the petitioner's wife's declaration does not establish that the petitioner was subjected to battery or extreme cruelty as those terms are defined in the statute and regulation. The record remains insufficient in this regard. The petitioner, therefore, does not meet the eligibility criterion at section 204(a)(1)(A)(iii)(I)(bb) as an alien who has been subjected to battery or extreme cruelty by his U.S. citizen spouse.

On the issue of the petitioner's good faith entry into the marriage, C-D- does not provide evidence of the petitioner's intent in her February 23, 2009 declaration. C-D- declared: that the couple met at a [REDACTED]; that the couple started dating in October 2004; that by June 2005 they decided to live together so she found a house and the petitioner bought it; and they decided to get married. C-D- also noted that the couple had a joint bank account used almost exclusively for the payment of the mortgage and that the petitioner gave her cash for household expense items. She also stated that the couple married in

good faith and that they had the best intentions going into the marriage and that as she deals with her depression the couple is trying to work things out.

These general statements do not provide insight or detail into the couple's relationship and more importantly these general statements do not evidence the petitioner's intent in entering into the marriage. The declaration of C-D- does not add probative evidence on the issue of the petitioner's good faith entry into the marriage and thus, the record remains insufficient in this regard. The petitioner has failed to establish that he entered into the marriage in good faith. As the petitioner has not established that he entered into the marriage in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has also failed to demonstrate that he qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, the AAO affirms its previous decision that section 204(g) of the Act mandates denial of this petition.

The consideration of the February 23, 2009 declaration of C-D- in this motion does not provide evidence sufficient to overcome the previous findings of the AAO. There is no basis to overcome the AAO's previous determinations that the petitioner failed to establish that he entered into his marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa), that he was subjected to battery or extreme cruelty as defined by the statute and regulation, or that section 204(g) of the Act is inapplicable.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met, and the previous decisions of the AAO will be affirmed.

ORDER: The February 10, 2009 and the August 4, 2009 decisions of the AAO are affirmed. The petition is denied.