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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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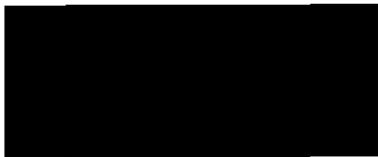
FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date: **SEP 13 2010**

IN RE: Petitioner: [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:



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. The director denied the petition, determining that the petitioner had not been subjected to battery or extreme cruelty perpetrated by his spouse. On appeal, counsel submits a brief statement on the Form I-290B, Notice of Appeal or Motion.

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 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.

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(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 Dominican Republic. He initially entered the United States in or about July 2000 without inspection. On November 20, 2006, the petitioner married S-P-<sup>1</sup>, the claimed abusive United States citizen spouse. On or about December 30, 2007, S-P- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-130 was denied on November 17, 2008 for abandonment. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on October 27, 2008. The petitioner claimed on the Form I-360 that he resided with S-P- from November 2006 to October 2008.

*Abuse*

The petitioner initially did not submit any evidence regarding the claimed abuse. In response to the director's request for further evidence (RFE) the petitioner submitted a November 27, 2009 sworn statement. The petitioner indicated that he separated from S-P- in October 2008 because he discovered that she had committed adultery by having an extra marital affair. The petitioner stated that before he separated from his wife "there was mistreatment and abuse that [he] endured starting right after a few months we [sic] married in the United States." The petitioner noted that the mistreatment "came in the form of verbal threats, such as warning [him] if [he] stayed late or not respecting her, and following

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

[him] on the streets and needing to know every move [he] made.” The petitioner added that S-P- had included threats regarding the immigration process and that she would make it bad for his future if he decided to separate from her. The petitioner indicated that he believed he was the father of S-P-'s child until he received the results from a DNA test that showed he was not the father. The petitioner stated that he confronted S-P- with the results and she admitted having an affair and that she moved out.

The record also included a psychological evaluation prepared by [REDACTED] licensed clinical social worker, from the petitioner's visit on December 11, 2008. [REDACTED] noted that the petitioner had described symptoms of depression, suicidal thoughts, poor concentration, lack of interest in activities, and confusion about his feelings. [REDACTED] found that the stressor in the petitioner's situation was his separation from his wife. [REDACTED] noted that the petitioner indicated his marriage with S-P- was stable for the first four months and then S-P- became less attentive, but after she became pregnant the petitioner was very pleased. [REDACTED] noted further that the petitioner indicated he did not notice that his name was not listed on the child's birth certificate until this was pointed out by United States Citizenship and Immigration Services (USCIS) and that subsequently he and S-P- went to the appropriate agency and had his name added to the birth certificate. [REDACTED] noted that the petitioner underwent a blood test and that when he discovered he was not the biological father of S-P-'s child, S-P- admitted her affair and decided to move in with her mother. [REDACTED] noted that the petitioner missed the child. [REDACTED] indicated that the petitioner presented with adjustment disorder with depressed mood. The record also included a report from a follow-up session conducted on August 11, 2009. [REDACTED] noted that the petitioner reported that he continued to feel hurt by his wife's betrayal and that he worried about the care of the child. [REDACTED] noted her clinical impression of the petitioner as adjustment disorder with anxiety.

The record further included three affidavits. In a November 20, 2009 affidavit, [REDACTED] declared that when the petitioner told her the child was not his, she was surprised that the petitioner's wife would cheat on him. She also confirmed that the petitioner continued to reside in the same apartment she had rented to him and S-P-. In the affidavit of [REDACTED] sworn to on November 20, 2009, [REDACTED] stated that he drove the petitioner and his wife to the hospital when their daughter was born and that he was surprised and saddened to learn that the child was not the petitioner's child. [REDACTED] also noted that the petitioner was deeply sad and depressed over his discovery that the child was not his child. In the affidavit of [REDACTED], sworn to on November 24, 2009, [REDACTED] declared that she was surprised that the petitioner's wife committed adultery and lied about the baby being the petitioner's child.

Upon review of the petitioner's statement, the affiants' statements on his behalf, and [REDACTED] evaluation, the director determined that the petitioner's wife's infidelity did not meet the definition of extreme cruelty envisioned by Congress and that having an affair is not a factor that is considered abuse for immigration purposes.

On appeal, counsel for the petitioner asserts that the petitioner's spouse's infidelity and admission that the petitioner was not the biological father of her child establishes his eligibility as a spouse who has been subjected to extreme cruelty. Counsel also asserts that the director did not give any weight to the

petitioner's therapist's evaluation which detailed the petitioner's emotional problems resulting from his marriage.

Upon review of the petitioner's statement in support of the petition, the AAO finds that the petitioner has not been subjected to battery or extreme cruelty. As the director determined, infidelity is not an action that is considered extreme cruelty under the statute and regulations. Rather, 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. . . ." The petitioner has failed to establish that his former spouse's actions rose 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. Similarly, the petitioner's statement that he had been subjected to mistreatment and abuse and threats is vague and general and does not provide the necessary detail to establish that he had been subjected to battery or extreme cruelty. There is no information in the record regarding specific credible instances of abuse that could be categorized as battery or extreme cruelty. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some 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 AAO has reviewed the affidavits from the three individuals offering evidence on behalf of the petitioner. Each affiant notes only their surprise that the petitioner's wife had an extramarital affair and that the petitioner was not the biological father of her child. The affiants do not provide evidence that the petitioner was subjected to battery or extreme cruelty perpetrated by his wife.

The AAO has also reviewed the evaluations prepared by [REDACTED] regarding the petitioner's mental condition. [REDACTED] noted that the petitioner suffered from adjustment disorder with depressed mood or with anxiety; however, she finds only that the petitioner's psychosocial stressor was his separation from his wife. [REDACTED] does not identify specific abuse or underlying trauma or provide any information regarding any abuse as defined in the regulation and statute as a causative or contributing factor in the petitioner's mental health condition. Thus, the AAO does not find that the evaluations prepared by [REDACTED] are probative in establishing that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse, as battery and extreme cruelty are defined in the statute and regulation.

When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of battery or extreme cruelty. As the director determined, infidelity is not considered an action of extreme cruelty in this matter. The claims made by the petitioner and the general statements submitted on his behalf fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that his former spouse'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

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petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his spouse.

In visa petition proceedings, the burden of proving eligibility for the benefit sought 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.