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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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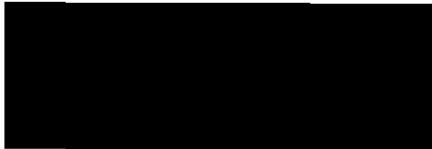
FILE: [REDACTED] Office: VERMONT SERVICE CENTER

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.

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.

* * *

(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 director denied the petition, after determining that the applicant had not established that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion. In a letter dated May 28, 2010, counsel asserts that the petitioner believes the decision to deny him relief is in error. Counsel asserts that the marriage was not a case of marital incompatibility or abandonment and then restates the information the petitioner included in his November 23, 2008 and February 23, 2010 statements. Counsel attaches a Divorce Decree issued by the Court of Common Pleas of Bedford County, Pennsylvania, terminating the petitioner's marriage on April 1, 2010 and an additional psychiatric assessment and order dated March 12, 2010, wherein the petitioner's diagnosis of adjustment disorder and anxiety is repeated. Counsel further attaches all the documents previously submitted and reviewed by the director.

Upon review of the director's decision in this matter, the AAO finds that the director properly determined that the petitioner had not established that he had been subjected to battery or extreme cruelty by his now former United States citizen spouse. The director articulately set out the deficiencies in the evidence submitted, noted inconsistencies in the petitioner's statements, and also noted that the petitioner's spouse's had obtained restraining orders against the petitioner beginning July 7, 2008 which had been renewed until July 6, 2010.

On appeal, counsel for the petitioner submits a letter wherein counsel repeats the petitioner's November 23, 2008 and February 23, 2010 statements. Counsel provides no other argument or evidence in the letter submitted. Neither counsel in his letter nor the petitioner in any additional

statement addresses the deficiencies as noted in the director's April 1, 2010 decision. For example, the director acknowledged the petitioner's claim that his spouse took all his money from his bank account but noted that the petitioner had not offered evidence of a bank account and the statements accompanying the bank account. In response to the director's request for further evidence (RFE), the petitioner provided evidence of a joint bank account in both the petitioner and his former spouse's names and a copy of a check signed by the petitioner's spouse withdrawing funds from the account. As the director determined, the withdrawal of funds by the petitioner's former spouse from the joint account even if without the petitioner's permission, is not evidence of abuse. The AAO finds that the petitioner on appeal does not establish that his former spouse controlled him financially.

The director also acknowledged the petitioner's initial claim that his former spouse left him, moved to Oregon, and had the petitioner served with a 35-page document in July 2008 falsely accusing the petitioner of physical abuse and sexual assault. The director noted that in response to the RFE the petitioner added that his former spouse hit him in the back with a frying pan, called the petitioner derogatory names, threatened to have him deported, told the petitioner that she owned him and isolated him from the few friends he had in the United States. The director questioned the validity of these claims as the petitioner failed to refer to any instances of physical abuse, threats, name calling, or isolation in his initial statement. On appeal, neither the petitioner nor his counsel addresses why the petitioner did not include the claims of physical abuse, threats, name calling, or isolation in his initial statement. The AAO shares the director's concern with regard to the escalation in the severity of the claimed abuse described by the petitioner over the course of the petition. When he filed the petition, the petitioner's claim of abuse was focused on his former spouse's abandonment, taking his money, and serving him with a 35-page document falsely accusing him of physical abuse and sexual assault. However, by the time the petitioner responded to the director's RFE, his claim of abuse had expanded to include verbal and psychological abuse and physical abuse. The AAO agrees with the director's conclusion that the escalation of the nature and type of claimed abuse amounts to inconsistent testimony on the part of the petitioner, which undermines the credibility of his testimony. The petitioner has provided no statements or other information on appeal in support of a contrary conclusion.

Further, as the director observed, the petitioner provided copies of restraining orders that the petitioner's spouse had filed against him in response to the RFE. The director noted that the restraining orders against the petitioner were renewed and extended until July 6, 2010. Although the petitioner indicated in his testimony that he had been served with a 35-page document containing false accusations, the petitioner does not explain or otherwise acknowledge the circumstances regarding those accusations. The record on appeal includes no further information explaining or contesting the restraining orders filed against the petitioner.

The AAO has re-reviewed the statements from two individuals who stated that the petitioner's spouse had left him and claimed that she would return to the petitioner but that she never did. The AAO agrees with the director's ultimate determination that these statements lack evidence that the petitioner was subjected to battery or extreme cruelty perpetrated by his former spouse. The record on appeal includes no new testimony offered on the petitioner's behalf.

The AAO has reviewed a November 7, 2008 mental status evaluation prepared by [REDACTED] M.D. who diagnosed the petitioner with major depression, single episode, moderate, R/O panic disorder and noted the petitioner's psychosocial stressors as marital dissolution. In a follow up psychiatric assessment and order dated March 12, 2010, submitted on appeal, [REDACTED] noted: that the petitioner had initially done well for one to two months after his last appointment, so he stopped taking his medication; that the petitioner's former spouse began harassing him again and all his previous symptoms returned; that the petitioner feels fine except when his former spouse calls; and for this reason the petitioner does not want to resume every day medication. [REDACTED] finds that the petitioner suffers from adjustment disorder and anxiety and notes the petitioner's problems with his former spouse. The AAO finds that [REDACTED] has not provided any chronological, clinical, or substantive details of the claimed abuser's alleged abuse. Other than noting that the petitioner's psychosocial stressor is marital dissolution and vaguely referring to the petitioner's former spouse's harassment, [REDACTED] does not identify specific abuse or underlying trauma or provide any information that abuse as defined in the regulation and statute was 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 former 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 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 former spouse in order to meet his burden of proof. In this matter, he has failed to do so. 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 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. The claims made by the petitioner and the general statements submitted on his behalf fail to establish that the petitioner 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 the petitioner. The record is simply insufficient in this regard.

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.