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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

Bq



FILE:



Office: VERMONT SERVICE CENTER

Date: **SEP 23 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 February 18, 2010, the director denied the petition, determining that the petitioner had not established: that he had a qualifying relationship with the claimed abusive United States citizen spouse; that he had been subjected to battery or extreme cruelty; and that he is a person of good moral character.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and documents 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Colombia. He entered the United States on or about May 2005 with a B-2 visa. The AAO notes that the petitioner had previously entered the United States on several occasions prior to his May 2005 entry. On September 7, 2005, the petitioner married J-G-¹, the claimed abusive United States citizen spouse. On October 5, 2005, J-G- 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 and Adjust Status. The Form I-130 was denied on October 14, 2008. On October 20, 2008 the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner filed a second Form I-485 on or about March 27, 2009. Both Forms I-485 remain pending. On the Form I-360, the petitioner indicated that he had resided with J-G- from September 2005 to October 2008. The record includes a Final Judgment of Dissolution of Marriage, terminating the petitioner and B-G-'s marriage which was signed on June 24, 2009 and filed with the Clerk of the

¹ Name withheld to protect the individual's identity.

Clerk of the Circuit in Miami-Dade County, State of Florida on or about August 20, 2009.

Qualifying Relationship

The director determined that the record did not include evidence of the status of the petitioner's marriage. The director found that the petitioner had not established a qualifying relationship with the claimed abusive spouse, as the record did not include evidence of the termination of the petitioner's marriage. The AAO withdraws the director's decision on this issue. The record includes evidence that the petitioner was married to B-G- when the Form I-360 was filed and thus the petitioner has established a qualifying relationship.

Good Moral Character

The AAO also observes that the record includes a local police clearance issued by the Miami-Dade Police Department, dated January 30, 2009, indicating that the petitioner did not have a local police record. As the local police clearance completes the record regarding any criminal history arising at the petitioner's places of residence, the AAO withdraws the director's determination that the petitioner has not established that he is a person of good moral character.

Abuse

The petitioner initially did not provide any evidence indicating that he had been subjected to battery or extreme cruelty. The director noted that the petitioner did not provide any further evidence in response to his request for further evidence (RFE). On appeal, counsel for the petitioner provides the first page of what appears to be a two-page document dated December 15, 2009 from the petitioner. Counsel asserts that this document was provided in response to the director's RFE; however, the record does not include a partial or complete copy of the petitioner's statement other than the partial document that is submitted on appeal. In the December 15, 2009 statement, the petitioner indicates: that his former wife is a profoundly disturbed woman; that about six months after the couple married everything changed; that after living together in a small apartment in [REDACTED], his former spouse wanted to move back to her grandmother's house so she could be with her dogs; that his former spouse became erratic demonstrating rapid mood swings and temper outbursts; that he did all the cooking, cleaning, and laundry and this increased his former spouse's sense of entitlement; that she became increasingly insulting and verbally abusive; and that she humiliated him in front of his friends by sneering at his ethnicity and culture. The petitioner reports further: that J-G- mocked his accent, pronunciation and clothing; that "[o]n many occasions she reportedly had a two-day party, involving extensive alcohol, marijuana and various other drugs"; that on another occasion she behaved in an openly seductive way with one of his friends; and that although she was never physically abusive, she did throw objects at him on three occasions during outbursts of rage. The petitioner notes that in October of 2008 J-G- demanded a divorce

The record on appeal also includes an affidavit, dated December 14, 2009, and sworn to on December 16, 2009, that is signed by [REDACTED] declares: that he has known the

petitioner for 25 years; that the petitioner's former spouse treated the petitioner in a severely emotionally and verbally abusive fashion for over three years; that J-G- was very controlling; that she stopped the petitioner from seeing his friends, including the affiant; that she monitored or made the petitioner account for his time; and that there was a high level of intimidation. The affiant notes: that when "we spent family weekends together, [he] remembered that [J-G-] frequently changed her moods"; that she treated the petitioner like an inferior, demanded the final say in decisions and did not him allow him to do things that she thought she had the right to do; and that most of the events happened in front of the petitioner's 12-year-old daughter. [REDACTED] states further; that the petitioner did not have equal access to the money; that J-G- made the petitioner account for the money he spent; and that she would threaten to withhold money from the petitioner and would make the petitioner ask for money for the basic necessities.

The record on appeal also includes a psychiatric evaluation, dated December 11, 2009, prepared by [REDACTED] indicates: that he saw the petitioner for two and one-half hours; that the petitioner's chief complaint was that he "[felt] betrayed and lost;" and that the petitioner's diagnosis is adjustment disorder with depressed mood. [REDACTED] reports that the petitioner indicated that he and J-G- had arguments about many issues including: keeping her dog at the apartment although this was not allowed; J-G- spending time with a woman she identified as her half-sister, even though they were not blood relations; and the petitioner not being invited to parties attended by J-G- and her alleged half-sister. [REDACTED] states that according to the petitioner the arguments would consist of J-G- being outraged, screaming, calling the petitioner names, using foul language, and many times making the comment that she has control because without her the petitioner would go back to his country and be a beggar again. [REDACTED] notes that at least ten times J-G- would not come home at all and that he considered the petitioner's spouse's failure to come home "spousal abuse, in a verbal and social isolation fashion." [REDACTED] also indicates that at some point, J-G- moved back with her grandmother but that J-G- began to persistently pursue the petitioner and that she was aggressive but also apologetic, and that he also found this to be spousal abuse in the possessive aspect. [REDACTED] indicates further that the couple reunited for a short time and that J-G- agreed to attend the upcoming immigration interview with the petitioner but she failed to attend and that the petitioner started divorce proceedings a short time later. [REDACTED] opines: that the petitioner "has been a victim of Spouse Abuse in every conceivable aspect and modality. Verbal, Social Isolation, Possessiveness, and quality of life;" and the petitioner "has been subjected to continuous spousal abuse lasting for 4 years; perhaps non-battering, but certainly with extreme cruelty."

Upon review of the record, the AAO finds that the petitioner's statements do not provide the detailed, consistent, and probative evidence that establishes eligibility for this benefit. The AAO acknowledges the petitioner's claim that his former wife was disturbed, erratic with rapid mood swings and outbursts, insulting and verbally abusive, and that she humiliated him in front of his friends by sneering at his ethnicity and culture. However, the petitioner does not provide detailed information regarding the circumstances of these events sufficient to conclude that the petitioner's former spouse's behavior constituted extreme cruelty. The AAO also finds that the petitioner has not provided substantive information regarding his former spouse's attendance at parties with drugs and

alcohol and seductive behavior with one of his friends to conclude that these actions constituted extreme cruelty. The petitioner's former spouse's behavior, as generally described, is not behavior that is considered extreme cruelty under the statute and regulations. Rather, 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 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 AAO has reviewed the affidavit of [REDACTED] does not indicate how he is aware of the petitioner's former spouse's behavior. Moreover, [REDACTED] declares that the petitioner's former spouse stopped the petitioner from seeing friends, including the affiant, but then indicates that he attended family weekends with the petitioner. In addition, although [REDACTED] references the petitioner's daughter, [REDACTED] does not provide any information that would suggest that the petitioner's daughter was subjected to battery or extreme cruelty perpetrated by the petitioner's former spouse. The AAO finds that [REDACTED] statement lacks detail and is not probative in establishing that the petitioner or his daughter was subjected to battery or extreme cruelty.

The AAO has also reviewed the evaluation prepared by [REDACTED]. The AAO observes that [REDACTED] recounts several, significant actions of the petitioner's former spouse that the petitioner himself does not mention. For example, the petitioner does not discuss J-G-'s spending time with a woman, does not indicate that J-G- tried to control him by telling him if not for her he would have to return to Colombia, that at least ten times J-G- did not come home at night, and that the couple separated, reunited, and then separated after J-G- did not attend the immigration interview. The petitioner does not discuss any of these actions and behaviors of his former wife in the statement provided to United States Citizenship and Immigration Services (USCIS). In addition, the AAO notes that [REDACTED] findings were based upon a single interview with the petitioner and, as such, they fail to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering his findings speculative and diminishing the value of his evaluation. Although the AAO accepts [REDACTED]' professional training and experience, his report does not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's adjustment disorder with depressed mood. The AAO also acknowledges [REDACTED] opinion that the petitioner was subjected to a form of extreme cruelty; however, there is insufficient information in the record to conclude that the petitioner was subjected to extreme cruelty as defined in the regulation and statute.

Upon review of the totality of the information in the record, including the petitioner's testimony, statements of others submitted on the petitioner's behalf, and the evaluation of [REDACTED] the AAO finds that the record does not provide sufficient probative evidence to demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty or that J-G-'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.

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. Name calling and arguing, as generally described by the petitioner, are not incidents of abuse that constitute battery or extreme cruelty as set out in the statute and regulation. 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 reason. 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.