



U.S. Citizenship
and Immigration
Services



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DATE: **APR 07 2011**

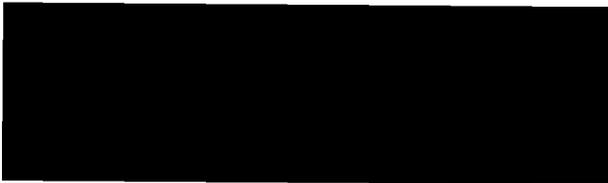
Office: VERMONT SERVICE CENTER

FILE: 

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:

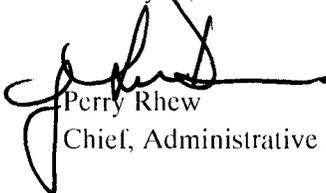


INSTRUCTIONS:

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 \$630. 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains 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 his United States citizen spouse.

The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by a United States citizen. Counsel for the petitioner submits a brief and documentation in support of the appeal.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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 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 set forth 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.

Facts and Procedural History

The petitioner is a native and citizen of Israel. He entered the United States in January 2006 on a B-2 visa. On January 11, 2008, the petitioner married N-G-¹, the claimed abusive United States citizen. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on June 26, 2009. The petitioner indicated on the Form I-360 that he had resided with N-G- from December 2007 to October 2008. On December 21, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by N-G-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief, and documentation in support of the appeal.

Battery or Extreme Cruelty

¹ Name withheld to protect the individual's identity.

In the petitioner's initial June 18, 2009 statement, he indicated that the first few months of his marriage were perfect. In June 2008, his wife told him she was pregnant and he was happy to know that he was going to be a father. In September 2008, however, during an argument, N-G- told him he was not the father of the child she was carrying. The petitioner indicated that N-G- told him she was involved with another man and he felt like his life was over. The petitioner reported that N-G- threw him out of the house, she was living with the father of the child and that she had threatened that she would turn him over to immigration. The petitioner noted his humiliation at this turn of events.

The initial record also included a May 12, 2009 evaluation prepared by [REDACTED], MSW, LCSW, based on her two meetings with the petitioner in May 2009. [REDACTED] noted that the petitioner reported that after six months of marriage, his wife told him she was pregnant and he told his parents, his friends, and acquaintances of his impending fatherhood. [REDACTED] also noted that when his spouse told him the baby was not his, during an argument, he was devastated. The petitioner indicated, according to [REDACTED], that he had no clue that his wife would cheat on him, because although they had arguments like other couples, they were always able to talk and work things out. [REDACTED] indicated that the petitioner immediately moved out because he stated he was not able to stay with someone who was pregnant with another man's child. [REDACTED] found from the petitioner's explanation of his symptoms that right after his separation he met the criteria for a diagnosis of major depressive disorder, single episode, severe without psychotic features. [REDACTED] stated that as of the date of the report, the petitioner still met the criteria for a diagnosis of adjustment disorder with depressed mood and that his depression is directly related to his wife's affair and the humiliation caused him and his family by the baby and other incidents surrounding the affair. [REDACTED] opined that the petitioner's spouse's behavior, in the aggregate, constituted extreme cruelty.

In response to the director's RFE, the petitioner submitted the affidavits of two friends. In the March 15, 2010 affidavit signed by [REDACTED] declared that the petitioner's spouse had an affair and became pregnant with another man's child and deceitfully maintained that the child was the petitioner's child which later caused the petitioner a lot of pain. In the March 16, 2010 affidavit signed by [REDACTED] declared that the petitioner had suffered emotional abuse and trauma as his wife carried on an affair with another man and subsequently became pregnant, but that during their marriage the petitioner had assumed the baby was his until his spouse confessed that it was not his child.

Based on the above information, the director denied the petition determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by a U.S. citizen.

On appeal, counsel for the petitioner asserts that the petitioner suffered extreme cruelty at the hands of his wife and submits the petitioner's personal statement and an updated report prepared by [REDACTED] regarding the petitioner's mental health.

In the petitioner's June 23, 2010 personal statement submitted on appeal, he declares that in March 2008, after he returned from a trip with friends, he felt that N-G- did not love him like she

used to and that she picked on him. The petitioner adds that on one occasion, N-G- screamed obscenities at him when he did not clear his plate after dinner and that she threw the plate against the wall and broke it. The petitioner adds another incident when N-G- yelled at him in a restaurant in front of his friends because they were not speaking English and she thought they were talking about her. The petitioner now indicates that N-G- would start fights every day and that she accused him of infidelity. The petitioner reports that N-G- called him derogatory names and yelled at him. The petitioner states that on August 24, 2008, when he returned home from work, he saw that N-G- was packing his clothes and she told him that the child she was carrying was not his and she wanted him to leave. The petitioner notes that he left but called her to tell her he loved her and she screamed that she did not want him to call and that if he did not stop she would file for divorce and call immigration to have him deported.

In the July 6, 2010 mental health assessment prepared by [REDACTED] she indicates that she again met with the petitioner on June 15, 2010, June 19, 2010, and June 25, 2010. [REDACTED] notes that her revised report is more complete as the petitioner previously had not disclosed certain information because of his embarrassment regarding his wife's behavior. [REDACTED] indicates that the petitioner now reports that the first two to three months everything was great in the marriage but after that N-G-'s behavior changed. The petitioner now reported to [REDACTED] that N-G- became violent, throwing and breaking glasses and dishes about every other week. [REDACTED] includes other information in her July 6, 2010 assessment that is similar to the petitioner's personal statement submitted on appeal. [REDACTED] again concludes that the petitioner met the criteria for a diagnosis of adjustment disorder with depressed mood and finds that his depression is directly related to his wife's affair, abuse, deception, and abandonment and again opines that the petitioner's spouse's behavior, in the aggregate, constituted extreme cruelty.

Upon review of the record, we find no error in the director's assessment of the relevant evidence. The petitioner provides testimony regarding the breakdown of his marriage and the distress he experienced as he realized his former spouse was involved with someone else which resulted in her pregnancy. The petitioner's initial testimony does not reveal any specific incident or event that demonstrates that his former spouse's behavior included any actions that constitute extreme cruelty as defined by the statute and regulation. Infidelity which results in pregnancy, although may be devastating to the petitioner, is not an action or behavior that constitutes extreme cruelty as contemplated by Congress in enacting the battered spouse legislation. Likewise, the petitioner's spouse's desire to separate, although causing the petitioner anguish, does not constitute extreme cruelty under the statute and regulation. Although the petitioner mentions that on one occasion, N-G- threatened to divorce him, which would result in his lack of immigration status, the record does not include sufficient probative evidence of the surrounding circumstances to conclude that her actions were an attempt to manipulate or control the petitioner.

The petitioner's report of his interactions with his spouse to [REDACTED] also fails to reveal any incident or event that constitutes extreme cruelty under the statute and regulation. The petitioner initially reported to [REDACTED] that although the couple had arguments like other couples, they were always able to talk and work things out and that he had no clue that his wife would cheat on

him. The petitioner does not provide any probative evidence in his initial statements to [REDACTED] of extreme cruelty under the statute and regulation.

The petitioner's statement on appeal adds information that is inconsistent with his initial statement. For example, the petitioner initially reported that everything was fine in his marriage for the first few months and that he was happy when he learned that he was going to be a father. The petitioner does not report any incidents of name calling, of throwing dishes every other week, or accusations of infidelity. The petitioner initially reported that the separation occurred in September 2008, during an argument when his spouse told him she was pregnant by another man. In his statement on appeal, he indicates that his separation occurred on August 24, 2008 when he came home from work and his spouse was packing his clothes and told him that she was pregnant with another man's child. The petitioner's statements to [REDACTED] in July 2010 also escalate the nature and type of his wife's alleged abuse to include incidents of name calling, throwing objects, and incessant arguing that began occurring two to three months after the marriage. The petitioner's expansion of the frequency and nature of the negative interactions with his spouse from March to September 2008 amounts to inconsistent testimony on the part of the petitioner which undermines the credibility of his testimony.

Upon review of [REDACTED] two mental health evaluations, we find no probative testimony that provides a foundation for the conclusion that the petitioner's spouse's behavior in the aggregate constitutes extreme cruelty as defined in the statute and regulation. While we do not question [REDACTED]'s professional training and experience, the record does not include probative credible testimony that reflects that the petitioner's spouse's behavior included actual threats, controlling actions, or other abusive behavior that was part of a cycle of psychological or sexual violence. Moreover, the record does not include adequate explanations for the petitioner's failure to initially report these incidents to either United States Citizenship and Immigration Services (USCIS) or [REDACTED]

Upon review of the petitioner's friends' affidavits submitted in response to the director's RFE, the affiants do not speak of any particular verbal or physical abuse but rather note only the petitioner's devastation that his wife had an affair that resulted in pregnancy. As observed above, infidelity is not an action that constitutes extreme cruelty under the statute and regulation.

Upon review of the petitioner's statements and the statements and evaluations submitted on his behalf, the evidence of record lacks the descriptive detail necessary to establish that N-G-subjected the petitioner to battery or that her actions constituted extreme cruelty as defined in the statute and regulations. The petitioner has failed to establish that N-G-'s actions were comparable to the types of 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. Nor has the petitioner established that N-G-'s behavior was part of an overall pattern of violence or coercion. 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 (9th Cir. 2003) (interpreting the

definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). In this matter, the petitioner has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by N-G-

Conclusion

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. The petition remains denied.