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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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DATE **APR 18 2011**

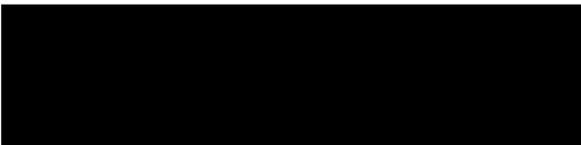
Office: VERMONT SERVICE CENTER

File: EAC 07 162 50092

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. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed. The petition remains denied.

The petitioner seeks immigrant classification under 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 determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by a United States citizen or that he had entered into the marriage in good faith. On appeal, the AAO concurred with the director's decision but remanded the matter in order for the director to issue a Notice of Intent to Deny (NOID) the petition in compliance with the regulation in effect when the petition was filed. On remand the director issued a NOID, and after review of counsel's rebuttal to the NOID, again denied the petition and certified his decision to the AAO. On certification, counsel submits a brief and a statement from the petitioner.

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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared

residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Facts and Procedural History

The petitioner is a native and citizen of India. He married M-Y-¹, the claimed abusive United States citizen on April 5, 2005 in India. He entered the United States on November 25, 2005 on a K-3 nonimmigrant visa as the spouse of a United States citizen. The couple's divorce was finalized on September 10, 2008. On May 14, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On January 11, 2008, 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 M-Y- or that he had entered into the marriage in good faith. Counsel for the petitioner timely submitted an appeal. The AAO concurred with the director's determination but remanded the matter so that the director could issue a NOID, in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) that existed when the petition was filed.² The director issued a NOID on February 23, 2010, informing the petitioner that the record did not establish that he had been subjected to battery or extreme cruelty perpetrated by M-Y- or married M-Y- in good faith, and accorded the petitioner an opportunity to submit evidence to overcome the NOID. The petitioner, through counsel, responded to the NOID. On December 16, 2010, upon review of the rebuttal, the director determined that the evidence and argument submitted failed to overcome the deficiencies set out in the NOID. The director certified his decision to the AAO. The petitioner, through counsel supplemented the record with a brief and a statement signed by the petitioner.

Battery or Extreme Cruelty

The evidence in the record prior to the AAO's May 21, 2009 decision has been discussed and the discussion regarding the evidence previously submitted is incorporated herein by reference. The AAO considered the April 3, 2008 evaluation and the July 30, 2008 statement submitted by [REDACTED] the July 7, 2008 letter from [REDACTED], regarding the petitioner's psychotherapy sessions, and affidavits from the petitioner's friends and family, as well as the petitioner's statements, and articulated the reasons this evidence did not establish that the petitioner had been subjected to battery or extreme cruelty. The AAO found that the petitioner had not established that he had been subjected to battery and that the petitioner's claim, based on his former spouse's promiscuous relationship with another person, did not

¹ Name withheld to protect the individual's identity.

² While it is no longer a regulatory requirement to issue a NOID for petitions filed subsequent to June 18, 2007, the instant petition was filed on May 14, 2007.

constitute extreme cruelty as defined in the statute and regulation. The AAO found that the petitioner's statements regarding his treatment by his in-laws lacked credibility.

In rebuttal and on certification, counsel for the petitioner asserts that the petitioner's former spouse's infidelity caused a traumatic effect on the petitioner which was confirmed in Dr. Kulic's evaluation. Counsel avers that the petitioner's spouse's acts are within the scope and level of extreme cruelty as required under the Act. Counsel contends that once things were not going well in the petitioner's new family, he was treated poorly and threatened with expulsion from the family home and that these actions were emotionally abusive, isolating and economically threatening and made in an effort to control the petitioner's behavior.

The record subsequent to the AAO's May 21, 2009 decision includes the petitioner's two additional statements. Of note, the petitioner initially based his claim on his wife's infidelity and equated her acts of infidelity with abuse and extreme cruelty. In response to the director's RFE, the petitioner added that his father-in-law forced him to do menial work around the house and criticized and called him names and that after he confronted his wife about her infidelity, she told her parents something about him and they became more abusive and threatened they would have him arrested and deported. The petitioner in his statement in response to the NOID declared that he was basically confined to his in-laws' home, when he found a job his in-laws reacted angrily, and after he confronted his wife about her infidelity, he was moved to a small storage room and given only one meal a day. The petitioner also added that he was told to stay in that room and not come out even to work. The petitioner added further that one day his father-in-law came home from work and told him he had to leave that day or he would call the police and report that the petitioner had stolen from them and so the petitioner left. The petitioner's statement on certification mirrors his statement provided in response to the director's NOID.

In response to the NOID, the petitioner also provided a March 11, 2010 letter signed by [REDACTED] wherein she noted that the petitioner had received weekly psychotherapy services from June 23, 2008 through November 19, 2009 and that his depression had lifted. [REDACTED] offered her opinion that the petitioner's return to India would re-traumatize him. The record also included a March 23, 2010 affidavit signed by [REDACTED] who declared that she used to visit the petitioner's former wife and noticed that his wife and her family used to ill treat the petitioner and tell him to go inside and do the chores. [REDACTED] also noted that the petitioner told her that his in-laws treated him like an animal. In a March 23, 2010 statement signed by [REDACTED] noted that the petitioner told her that he was mentally and emotionally abused during his marriage.

Upon review of the record, the petitioner has not provided a consistent credible account of his interactions with his former spouse and her family. Initially the petitioner made no claim that he was treated poorly by his former spouse's family but indicated that his wife's infidelity constituted abuse and extreme cruelty. In his second affidavit, he added information regarding his treatment at the hands of his in-laws and in his third and fourth statements adds that he was basically a prisoner inside his former spouse's home. In addition to the escalation of the nature and type of abuse he allegedly suffered, the petitioner seems to suggest that his in-laws wanted

him to leave but also essentially kept him a prisoner in their home. Upon review of the petitioner's differing accounts of his relationship with his former spouse and that of her family, we find the petitioner's escalation is inconsistent testimony on the part of the petitioner which undermines the credibility of his testimony.

The statements of [REDACTED] do not provide specific information of incidents they personally witnessed, perpetrated by either the petitioner's spouse or her family, that constitutes battery or extreme cruelty. The opinion of [REDACTED] that the petitioner would be re-traumatized if returned to India is not an issue in this petition. As determined previously, the marital problems the petitioner described to [REDACTED] as set out in their evaluations and statements, do not include episodes of behavior that constitute extreme cruelty under the statute and regulation.

We reiterate that the petitioner's spouse's infidelity although painful to the petitioner is not a behavior that constitutes extreme cruelty under the statute and regulation. As stated in our previous decision, we acknowledge that the petitioner's spouse's infidelity, the ultimate failure of his marriage, his fears regarding potential loss of immigration status, and the problems he associated with a return to India form a reasonable basis for his depression. However, the petitioner's depression has not been causally connected to specific acts of battery or extreme cruelty as defined in the statute and regulation perpetrated by his former spouse or at her behest by her family. The record does not include sufficient credible, probative testimony or evidence that supports the petitioner's claim that he was subjected to battery or extreme cruelty.

When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty. The petitioner does not provide a credible, detailed account of specific incidents or events that demonstrates 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 him. The petitioner's statement and the statements of others lack the consistent detail necessary to establish that his former spouse'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 his former spouse'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 record presented lacks sufficient credible information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by his former spouse.

Good Faith Entry Into Marriage

As observed in our prior decision, the petitioner provided only a cursory description of his initial introduction and subsequent interaction with his former spouse prior to their marriage. The AAO discussed the insufficiency of the evidence and will not repeat the discussion here. On certification, counsel asserts that the U.S. Consulate in New Delhi, thoroughly, completely and competently verified the proof and bona fides of the petitioner's marriage prior to issuing the K-3 visa. Counsel also contends that the Judgment of Divorce granted because the petitioner's former spouse abandoned him is evidence of the bona fides of the petitioner's marriage and that the failure of U.S. Citizenship and Immigration Services (USCIS) to recognize that the marriage was a good faith marriage would in effect nullify the divorce judgment.

The petitioner's marriage certificate confirms the marital relationship, but it does not establish the petitioner's own good faith in entering the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). The petitioner's statements when reviewed in their totality do not demonstrate that the petitioner's intent to enter into the marriage was in good faith.

Moreover, while relevant, the petitioner's admission to the United States as a nonimmigrant spouse is not prima facie evidence of his good faith in entering the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition might not *standing alone* prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws."). Similarly, a legal marriage and the termination of that marriage in a United States Court do not assist in establishing a petitioner's intent when entering into the marriage.

A finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a bona fide marriage. In this matter, the petitioner does not describe his courtship, marriage or any of his shared experiences with his former spouse in probative detail. Although the petitioner has explained his inability to obtain evidence of commingling of resources and shared financial responsibilities, he has not adequately demonstrated the emotional ties between the couple. The letters and statements submitted on his behalf also fail to specifically describe observations of his interactions with his former spouse or any other relevant aspects of his behavior at the time of his courtship, wedding, and marriage. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with his former spouse in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Conclusion

The petition will be denied for the reasons stated above, with each considered as an independent and alternative basis for denial. 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. Accordingly, the December 16, 2010 decision of the director is affirmed and the petition remains denied.

ORDER: The director's December 16, 2010 decision is affirmed. The petition remains denied.