

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

B9



DATE:

AUG 18 2011

Office:



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, [REDACTED], 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 will remain 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 the United States citizen spouse or that the petitioner had established a qualifying relationship with a United States citizen. Counsel for the petitioner timely submits an appeal and brief.

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.

(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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Facts and Procedural History

The petitioner is a native and citizen of [REDACTED] who entered the United States on March 14, 2005 as a B-2 visitor with temporary authorization to remain in the United States until September 13,

2005. He married D-R-¹, the claimed abusive United States citizen on February 24, 2006. On March 13, 2006, D-R- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Forms I-130 and I-485 were denied on January 25, 2008 due to abandonment. The marriage was dissolved on April 25, 2008. On March 17, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On March 27, 2009 and again on December 30, 2009, the director issued requests for evidence (RFE). Upon review of the record, including the petitioner's responses to the RFEs, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by D-R- or that he had a qualifying relationship with a United States citizen. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

Battery and Extreme Cruelty

In the petitioner's March 5, 2009 personal statement, he noted his differences with D-R- in regards to his culture and religion. The petitioner stated that D-R- viewed his religion as a weakness and verbally and mentally abused him and ultimately had an affair. The petitioner stated that D-R- called him derogatory names and mocked him. The petitioner provided a copy of the judgment for divorce and the transcript of proceedings which listed the grounds of divorce as extreme and repeated mental cruelty and adultery. The transcript indicates that D-R- had been served by publication and did not appear for the court proceedings.

The petitioner also provided affidavits signed by [REDACTED] who indicated the petitioner had told them the D-R- called him names or humiliated him in public. In the affidavit of [REDACTED] she stated that D-R- made fun of the petitioner's sexual performance in front of people at a church meeting. In the affidavit of [REDACTED] declared that once when he visited the petitioner, the petitioner was upset that he had not received a job offer and that D-R- called him a loser. [REDACTED] also indicated that once when he was with the couple at a mall, D-R- embarrassed the petitioner when she would not get into his car and yelled at him and called him names when he would not buy the things D-R- wanted. The petitioner also included a letter from a church priest in [REDACTED] who noted that the petitioner's mother had told him about D-R-'s affair and baby.

The record further included a psychiatric evaluation dated April 30, 2009 prepared by [REDACTED] Ph.D., LCPC based on six psychotherapy sessions with the petitioner between May 24, 2008 and September 27, 2008. Dr. [REDACTED] noted that the petitioner did not receive a job he wanted in May 2006 and that the petitioner's "depressive symptoms exacerbated in response to marital problems and divorce." Dr. [REDACTED] also noted the petitioner's report that he had not been physically, emotionally or sexually abused in the past 30 days and that "[h]e reported no other abuse in lifetime." Dr. [REDACTED] concluded that the petitioner was suffering from Major Depressive Disorder, Severe, Recurrent and Generalized Anxiety Disorder but did not provide causative factors for the petitioner's mental health condition.

¹ Name withheld to protect the individual's identity.

In response to the director's RFE, the petitioner provided a second statement in which he indicated that D-R- "constantly ridiculed and verbally attacked [him]" and that "[s]he would demean [him] and belittled [his] manhood, which led to her infidelity." The petitioner provided a second affidavit signed by [REDACTED] who noted that the petitioner had confided in him that D-R- called him bad words and made him feel like he was not a man.

The director determined, based on the evidence in the record, that the petitioner had not established that he had been subjected to battery or extreme cruelty as that term is defined in the statute and regulation.

On appeal, counsel for the petitioner asserts that D-R-'s conduct led to the petitioner wanting to end his life and but for his strong religious convictions would have committed suicide. Counsel contends that the petitioner's mental condition as a result of D-R-'s abuse is more than mere unkindness or marital tensions and incompatibilities. Counsel claims that the daily barrage of insults, manipulations, and betrayal suffered by the petitioner is the very reason the abused spouse classification was created.

A review of the record does not reveal and the petitioner does not claim that he was subjected to battery; rather his claim is based on the alleged extreme cruelty perpetrated by D-R-. A review of the record does not reveal that the petitioner was subjected to extreme cruelty. The petitioner has not provided probative detail of specific instances or events involving acts 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 D-R-'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)). Nor has the petitioner indicated D-R-'s acts were constant. Moreover, the AAO observes that the break up of a marriage, no matter how devastating to a petitioner, is insufficient by itself to demonstrate eligibility for this immigrant classification.

Upon review of the petitioner's statements and the statements submitted on his behalf, the record shows he was subjected to name calling and was embarrassed in public on occasion by his former spouse. The record does not include sufficient probative detail to demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that D-R-'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 deficient in this regard.

Upon review of Dr. [REDACTED] report, Dr. [REDACTED] does not identify specific events or instances of abuse that caused the petitioner's major depressive disorder or generalized anxiety disorder. Dr. [REDACTED] only notes that the petitioner did not receive a job that he wanted in May 2006 and that his

depressive symptoms were then exacerbated by marital problems and divorce. There is no discussion of specific conduct or behavior perpetrated by D-R-; rather Dr. [REDACTED] indicated that the petitioner reported no abuse in his lifetime. Accordingly, the record does not include probative evidence that D-R-'s conduct was a causative or contributing factor to the petitioner's diagnosed mental health condition.

The AAO has reviewed the transcript and divorce judgment terminating the petitioner's marriage to D-R-. The court's findings of fact are of little probative value because the judgment states that the petitioner's former spouse did not appear in court and did not file any counterclaims, hence, the divorce was granted in default. Accordingly, the default judgment was based entirely upon the petitioner's own assertions which as recorded in the transcript indicated only that D-R- was "mentally cruel to [him]" at least two times and that she committed adultery. The petitioner has not presented any evidence that the term "extreme and repeated mental cruelty" as cited in the judgment of divorce is equivalent to the definition of battery or extreme cruelty as set out in the regulation at 8 C.F.R § 204.2(c)(1)(vi). We note as well that adultery is not an act comparable to the acts described in the regulation at 8 C.F.R § 204.2(c)(1)(vi).

The AAO concurs with the director's assessment of the relevant evidence in this matter. When evaluating the record as a whole, the AAO finds the record lacks probative evidence regarding specific instances of abuse that could be categorized as battery or extreme cruelty. Infidelity and abandonment, as well as D-R-'s conduct as described, are insufficient to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by D-R-.

Qualifying Relationship and Immigrant Classification

As the director determined, the petition is also not approvable because the record fails to establish that the petitioner has a qualifying relationship with the claimed abusive United States citizen or that the petitioner is eligible for immediate relative classification based on a qualifying relationship with his former wife. An alien who is divorced from a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As previously noted, the petitioner's marriage in this matter was dissolved as of April 25, 2008 and he filed the instant petition on March 17, 2009, after the marriage was dissolved. As the petitioner failed to establish that he was battered or subjected to extreme cruelty by his former spouse, he has also failed to make the causal connection between his divorce and any abuse. Accordingly, the petitioner is not eligible for this immigrant classification because he did not establish a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen. He is also ineligible for immediate relative classification based on a qualifying relationship with his former wife.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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.