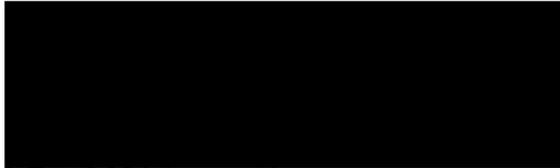


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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

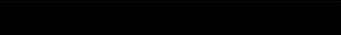


U.S. Citizenship
and Immigration
Services

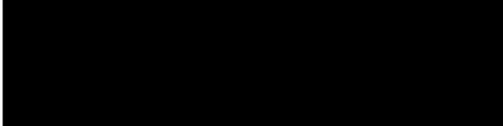


B9

FILE:  Office: VERMONT SERVICE CENTER Date: FEB 07 2011

IN RE: Petitioner: 

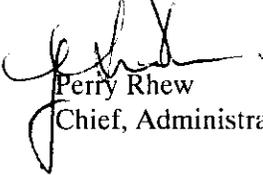
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 denied the petition because the petitioner did not establish that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief, and asserts, in part, that the petitioner has submitted sufficient evidence, in accordance with 8 C.F.R. § 204.2(c)(2)(iv), to show that his wife subjected him to battery and extreme cruelty. In support of his contention, counsel submits only the referenced brief and documentation already in the record.

As set out below, the AAO concurs with the director's determination that the petitioner has not established that he was subjected to battery or extreme cruelty.

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, 8 U.S.C. § 1154(a)(1)(J) 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 explicated 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 filed under section 204(a)(1)(A)(iii) of the Act are further explicated 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a national and citizen of Morocco, who entered the United States as a B-2 nonimmigrant visitor on March 7, 1998. On July 5, 2001, the petitioner married M-K-¹, a U.S. citizen. On October 7, 2002, M-K- filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 29, 2007, the District Director denied the I-130 petition due to abandonment, and denied the I-485 application based upon the denial of the I-130 petition. On April 25, 2007, the petitioner was served with a Notice to Appear for removal proceedings and remains in proceedings before the New York, New York Immigration Court.

The petitioner filed the instant Form I-360 on September 4, 2007. On September 26, 2007, the

¹ Name withheld to protect individual's identity.

director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character and good faith entry into the marriage. The petitioner, through counsel, responded with additional evidence. On December 9, 2009, the director issued a second RFE of, *inter alia*, the requisite abuse. The director also requested information regarding the current status of the petitioner's marriage to M-K-. The petitioner, through counsel, responded with additional evidence, including a Judgment of Divorce for the petitioner and M-K-, dated March 18, 2009.² On May 25, 2010, the director denied the instant I-360 petition because the petitioner did not establish that his spouse subjected him to battery or extreme cruelty during their marriage. The petitioner, through counsel, timely appealed the denial of the instant I-360 petition.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that his spouse subjected him to battery or extreme cruelty during their marriage:

- A statement from the petitioner, dated March 3, 2010, submitted in response to the December 9, 2009 RFE;
- An affidavit from [REDACTED] dated August 29, 2007;
- An affidavit from [REDACTED] dated August 29, 2007;
- Two affidavits from [REDACTED] dated August 29, 2007 and January 16, 2010, respectively; and
- Copies of photographs.

The record does not include a statement from the petitioner submitted at the time of filing or on appeal, addressing his claim that he was subjected to battery or extreme cruelty by his spouse. In his March 3, 2010 statement, submitted in response to the December 9, 2009 RFE, the petitioner states, in part, that: "Everything was great" when they first got married, "[b]ut soon things started going south"; M-K- took medication for a bipolar disorder, which she had not told him about prior to their marriage; M-K- was unable to hold a job; M-K- shoved him against a wall when he confronted her about taking money from him without asking; M-K- would storm out of the house and return a few days later; after September 11, 2001, M-K- referred to him as "you people" and "terrorist" and told him he would burn in hell if he did not convert; M-K- threatened to call "Homeland Security" on him; M-K- embarrassed him when she "took off to her parents['] house" when his mother came for a visit; when his brother came for a visit, M-K- "would stare at him and spit on the ground" and she put "all his stuff outside in the garbage can"; he lived in fear; and M-K- attacked him with vulgar words and physically by biting him and scratching his face.

In his August 29, 2007 affidavit, [REDACTED] states, in part, that he knows the petitioner was being abused because M-K- "would never let him have his friends over." [REDACTED] also states that he was at the petitioner's house one afternoon in the summer of 2002, when M-K- returned and became angry

²New York Supreme Court, Kings County, New York, Index No. 55271/08.

because he was there and slammed the door “very hard” and started yelling at the petitioner.

In her August 29, 2007 affidavit, [REDACTED] states, in part, that she knows that the petitioner was mistreated by M-K-. [REDACTED] states, “One day he was scratched on his face and bitten on his chest by her horribly. . . . I am the one who took his injured pictures.” [REDACTED] also states that M-K- yelled at the petitioner on the street.

In his August 29, 2007 affidavit, [REDACTED] states, in part, that he heard the petitioner and M-K- argue at times, but the petitioner did not like to talk about it and kept everything to himself. In his January 16, 2010 affidavit, [REDACTED] states, in part, that M-K- and the petitioner “lived together as husband and wife until mid August 2003 when she started staying out late and days at a time.”

Upon review of the totality of the information in the record regarding the claimed abuse of the petitioner, the AAO finds that the petitioner has failed to describe in probative detail specific threatening or controlling behavior of his wife that constitutes battery or extreme cruelty. It is noted that the petitioner provided general information and did not include specific dates for the claimed abuse, apart from stating that M-K- referred to him as “you people” and “terrorist” after September 11, 2001. As stated by the director, the photographs of the alleged abuse are undated. Although [REDACTED] states in her affidavit that she took the pictures of the petitioner, she does not mention when the pictures were taken or provide any probative details about the petitioner’s injuries. The petitioner also has not described his injuries in any detail, including the circumstances surrounding the injuries, or explained whether he sought medical treatment. Accordingly, the photographs are not credible evidence of abuse perpetrated by the petitioner’s spouse.

The AAO acknowledges the affidavits, discussed above, from [REDACTED] and [REDACTED]. Their observations of the petitioner, which include M-K- yelling at the petitioner and slamming the door, M-K- not allowing the petitioner to have his friends over, and M-K- arguing with the petitioner, fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that M-K-’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 petitioner has not established that his wife’s behavior constituted psychological or sexual abuse or was otherwise part of an overall pattern of violence. As the petitioner has described his wife’s behaviors, which include name calling, taking his money without asking, threatening to call “Homeland Security,” using vulgar words, embarrassing him in front of his family, and storming out of the house and not returning until a few days later, do not constitute extreme cruelty. The petitioner’s claims fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that M-K-’s behavior was accompanied by any substantiated coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over him. In sum, the AAO finds that the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty.

In this case, we do not find the petitioner's evidence sufficient to meet the petitioner's burden of proof. The petitioner has not established that M-K- subjected him to battery. The relevant evidence also fails to demonstrate that M-K- subjected him to extreme cruelty during their marriage, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the AAO concurs with the findings of the director that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.