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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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FILE:



Office: VERMONT SERVICE CENTER

Date:

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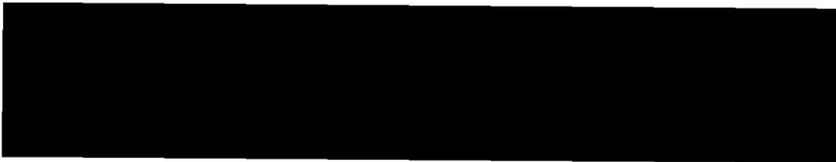
IN RE:

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,

Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the petition 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.

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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Republic of China (Taiwan). He entered the United States on or about March 16, 1996 as a B-2 visitor. On November 30, 2002, the petitioner married K-C-¹, the claimed abusive United States citizen. On or about February 22, 2008, K-C- 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. On March 17, 2009, the Form I-130 and the Form I-485 were denied. On March 1, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that he resided with K-C- from March 2002 to September 2008. On March 11, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director denied the petition on September 30, 2010. The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by K-C-. Counsel for the petitioner timely submitted the Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

Abuse

In the petitioner's initial statement dated February 25, 2010, he declared that: he realized K-C- had a drinking problem in 2003 and 2004, but because they were not together all the time he did not know the extent of her drinking problem; in March 2005 he witnessed that drinking was an everyday routine for K-C-; he realized that she would drive home from work drunk and he would have to go out and re-park the car; one night K-C- came home so drunk she fell down the steps

¹ Name withheld to protect the individual's identity.

of the apartment building and he had to pick her up and carry her into the apartment in front of the landlord and other tenants; K-C- refused to acknowledge that she had a drinking problem; he would threaten divorce if she did not get help but she did not get help; her behavior began to affect his schoolwork; when he tried to physically take her drinks away, she would push him away, hit, grab, and scratch him to get her drinks back; and although she hurt him physically, the verbal abuse was worse. The petitioner indicated that: K-C- would threaten him and say that he would not be able to stay in the United States without her; she used his immigration status to control him and get her way; one time during an argument she threatened to call the police and tell them that he was in the country illegally even though he was in valid student status at the time; at parties, his friends noticed that she was drunk and would ask him to take her home; one of his friends told him that K-C- had touched him inappropriately when she was drunk; on August 29, 2008 they were scheduled for their first immigration interview but three months after the first interview they were told they needed a second interview; and on September 7, 2008, K-C- went to Taiwan for a vacation and when he called and told her that their second immigration interview had been scheduled she told him that the relationship was over and she refused to return.

The initial record also included a February 26, 2010 psychological evaluation prepared by [REDACTED], which was based on a four-hour interview conducted on October 4, 2009. [REDACTED] noted the petitioner's report that when K-C- became angry she would assault him, that the petitioner suspected that K-C- was unfaithful to him, and K-C- verbally abused the petitioner and the verbal abuse included threats to have him deported. [REDACTED] concluded that it appeared that K-C-'s behavior was aimed at controlling the petitioner's behavior to keep him from questioning her alcohol use. Dr. Parsons diagnosed the petitioner with Depressive Disorder Not Otherwise Specified and recommended that he receive psychotherapy for this disorder.

The record further included letters from [REDACTED] and [REDACTED], the petitioner's landlord. In the December 24, 2009 letter signed by [REDACTED] noted that: he had known the petitioner since 1996; he met the petitioner and K-C- on a number of occasions; and when K-C- was able to relocate to San Francisco in May 2005, he attended dinner parties the couple put on and spoke with K-C- at her job where she would give him updates on the petitioner's academic progress and that she seemed very proud of the petitioner's accomplishments. [REDACTED] also noted that he had observed that K-C- used alcohol to deal with the stress of her job and that after she fell and broke her leg she would take her anger and frustration out on the petitioner. [REDACTED] stated that he could see that the petitioner was emotionally and physically injured by K-C-'s drunken outbursts, even in front of friends and guests and that the petitioner was disconsolate in September 2008 when K-C- decided to remain in Taiwan rather than stay with the petitioner. In the January 3, 2010 letter of [REDACTED] reported that: he saw the petitioner help K-C- when she fell and injured herself; he had to complain to the petitioner about the banging and yelling he heard when K-C- returned home drunk; the petitioner and K-C- were respectful to him and were wonderful tenants except when K-C- would stomp around upstairs and he heard yelling; and although he never witnessed K-C-'s physical abuse of the petitioner, he heard K-C- getting into physical altercations with the petitioner and visitors they had from Taiwan.

In response to the director's RFE, the petitioner provided a second personal statement. The petitioner declared that he felt ashamed to let other people and his friends know about his relationship with K-C- and embarrassed to be a man who let his wife abuse him. The petitioner stated: he would be depressed when she hit him; that taking care of her when she was drunk was stressful and made him more vulnerable to her abuse; she made him feel worthless and called him derogatory names when she was drunk; she belittled him in public; he believed she bossed him around in front of friends to show that she was in charge and that was very hard for him; she made him believe that he was nothing without her; and that this made it particularly painful when she completely abandoned him. The petitioner also noted that he lost contact with friends and learned that she had been putting him down to them and that one friend told him that K-C- had said that he was using her. The petitioner stated that K-C- used his status to control him and made him believe that he was useless and an embarrassment to her family and friends.

Counsel for the petitioner also provided articles on power and control in relationships, domestic violence, and a checklist to assist in determining whether an individual is being abused.

Based on the record, the director determined that the petitioner had not provided sufficient evidence establishing that he had been subjected to battery or extreme cruelty as defined by the statute and regulation.

On appeal, counsel for the petitioner asserts that United States Citizenship and Immigration Services (USCIS) failed to adjudicate the Form I-360 using the "any credible evidence" standard. Counsel contends that the petitioner's declaration includes statements of battery and that [REDACTED] and [REDACTED] confirm the physical altercations. In addition, counsel references [REDACTED] conclusion that K-C- followed a relationship pattern typical in a domestic violence relationship where K-C-'s behavior was aimed at controlling the petitioner's behavior. Counsel also notes that the petitioner's embarrassment at letting his wife abuse him limited the petitioner's ability to detail the abuse he suffered at the hands of K-C-. Counsel asserts that the Ninth Circuit Court in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004) found that any act of physical abuse constitutes domestic violence without further inquiry and that although K-C-'s abuse was tied to her alcohol problem, it does not discredit the physical abuse the petitioner endured. Counsel also contends that the petitioner was the victim of extreme cruelty. Counsel claims that the petitioner's relationship with K-C- followed a cycle of violence and that [REDACTED] found that K-C-'s behavior was aimed at controlling the petitioner's behavior. Counsel asserts that the petitioner's declarations, his letters of support, and the psychological evaluation are credible evidence of an overall pattern of abuse against the petitioner.

Upon review of the record, the petitioner's statements do not provide the detailed, probative evidence that establishes eligibility for this benefit. Because the petitioner's and the other affiants' statements are critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents to establish that he was subjected to abuse. In this matter his statements do not include the specificity necessary to conclude that he was subjected to battery or extreme cruelty as those terms are set out in the statute and regulation. The AAO concurs with counsel's statement that section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J)

of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of” USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, “All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(iv). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner’s burden of proof. While USCIS must consider all credible evidence relevant to a petitioner’s claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner’s burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless. Again, in this matter the petitioner’s statements and the evidence submitted on his behalf are without specificity and thus insufficient to establish eligibility for this benefit.

When determining whether the petitioner was subjected to battery in this matter, the AAO looks first to the petitioner’s statements. As counsel noted, the petitioner alleges that when he tried to physically take K-C-’s drinks away, she would push him away, hit, grab, and scratch him to get her drinks back. Other than this statement and the petitioner’s general reference to physical abuse, the petitioner does not provide probative detail sufficient to ascertain the circumstances of this event. The petitioner does not clarify how often this happened, whether the situation was mutually combative, or any information defining the interaction and the extent of the claimed battery between them. Contrary to counsel’s assertions, neither [REDACTED] provides statements detailing the claimed physical altercations. [REDACTED] references generally that there were physical altercations but does not state how or when he observed such altercations or provide information regarding any injury he observed resulting from the alleged altercations. [REDACTED] notes specifically that he did not observe any physical altercations, just that he heard yelling and banging and stomping on the floor, without any definitive evidence that what he heard constituted physical abuse perpetrated by K-C-. [REDACTED] bases her report of physical altercations on the petitioner’s general statements, statements that do not provide sufficient information to allow a conclusion that the petitioner was actually subjected to battery, rather than part of a mutually combative situation.

The petitioner has also failed to establish that he was subjected to extreme cruelty perpetrated by his spouse. In the petitioner’s initial statement he noted repeatedly that he was embarrassed by K-C-’s drunken behavior and having others view K-C-’s drunken behavior. Although he indicates K-C- would threaten that he would not be able to stay in the United States without her, he does not provide specific detail regarding the alleged threats, including when or how often they occurred. He does not explain or provide sufficient detail regarding specific acts of K-C-’s behavior that establish that K-C- tried to control him to get her way. The petitioner noted his

distress that K-C- abandoned him and that she gave up on the marriage, but K-C-'s behavior, as described, does not constitute extreme cruelty as set out in the statute and regulation.

In response to the director's RFE, the petitioner expanded upon his feelings at his former spouse's behavior and indicated his shame and embarrassment as a man who let his wife abuse him. He noted that she made him feel worthless and called him derogatory names when she was drunk, and used his status to control him. The petitioner, however, does not identify specific incidents and provide probative detail of any act on the part of his former spouse that suggests that he was subjected to extreme cruelty as defined by the statute and regulation. The petitioner does not provide probative testimony that K-C-'s behavior consisted of dominating tactics aimed at ensuring control of him and he does not provide descriptive information detailing his social isolation caused by his former spouse. Counsel's assertion that the petitioner's embarrassment at his former wife's behavior limited his ability to detail the purported abuse, even if true, does not eliminate the requirement that the petitioner provide the necessary evidence to allow a conclusion that he was subjected to extreme cruelty. Although the petitioner may have been embarrassed, his testimony in this instance is crucial in establishing eligibility for this benefit. The petitioner indicates generally that K-C- bossed him around in front of friends and belittled him in public; however, [REDACTED] indicated that the couple was affectionate at the dinner parties he attended and that K-C- spoke positively of the petitioner's accomplishments. [REDACTED] noted that the petitioner and K-C- were respectful and wonderful tenants when around him. Thus, the statements of [REDACTED] contradict the information the petitioner provided in his second statement to USCIS. The petitioner's statements suggest that he was embarrassed and humiliated as he believed he was viewed by others as a man who could not control his wife's behavior. The petitioner's feelings as described in this matter do not establish that his former spouse's actions in the relationship constituted extreme cruelty. As noted in *Hernandez v. Ashcroft, supra*: "every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence."

A review of the February 26, 2010 psychological evaluation prepared by [REDACTED] reveals that the evaluation was based on a single four-hour interview conducted on October 4, 2009. A single interview fails to reflect the insight and elaboration commensurate with an established relationship with a mental health professional. Although the AAO accepts [REDACTED] professional training and experience, she concluded that it appeared that the petitioner's former spouse's behavior was aimed at controlling the petitioner to prevent him from questioning her alcohol abuse. [REDACTED] does not provide a foundational basis for her general conclusion, including the specific acts that led to her conclusion. Accordingly, based on the limited time she had with the petitioner and the general report, her findings do not have a solid factual foundation. In addition, [REDACTED] does not causally connect her diagnosis of the petitioner's Depressive Disorder Not Otherwise Specified to specifically described behavior on the part of the petitioner's former spouse. [REDACTED] does not elaborate on her general conclusion that K-C- followed a relationship pattern typical in a domestic violence relationship where one party's behavior is aimed at controlling the other party. Moreover, although [REDACTED] recommended that the petitioner seek psychotherapy for his disorder, the petitioner has provided no evidence that he has done so.

Upon review of the totality of the record, the petitioner has not offered probative testimony or other

evidence that demonstrates he was the victim of any act or threatened act of physical violence or extreme cruelty, that K-C-'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's statements lack the probative detail necessary to establish that K-C- subjected him to battery or that her actions constituted extreme cruelty as defined in the statute and regulation. The petitioner fails 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 K-C-'s behavior was part of an overall pattern of violence or coercion. The record is simply insufficient in this regard.

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.