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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

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 15 2011

IN RE: Petitioner: [redacted]

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:

[redacted]

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.

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 AAO will withdraw the director's decision; however, because the petition is not approvable, the matter will be remanded for further action and consideration.

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 denied the petition on August 11, 2009 and subsequently granted the petitioner's September 14, 2009 motion to reopen the matter. On May 17, 2010, the director denied the petition determining that the petitioner had not established that he had been subjected to battery or extreme cruelty by his United States citizen spouse.

On appeal, counsel submits the petitioner's additional personal statement and a brief. We concur with the director's determination that the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his United States citizen spouse. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii) in existence when the petition was filed on March 16, 2007.

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.
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> * * *
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> (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 Pakistan. He entered the United States on or about April 30, 2006 on a K-1 fiancé visa. On May 8, 2006, the petitioner married M-I-[1], the claimed abusive United States citizen. On March 16, 2007, 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 M-I- from August 2006 to January 2007. On October 9, 2007, 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 August 11, 2009, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by M-I-. Counsel for the petitioner timely submitted a motion to reopen the matter to the Vermont Service Center and upon review of the motion, the director reopened the matter. On May 17, 2010, the director affirmed his previous August 11, 2009 decision and the petition remained denied.

[1] Name withheld to protect the individual's identity.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, the petitioner's affidavit, and a brief in support of the instant appeal.

Abuse

In the petitioner's initial statement dated March 9, 2007, he declared that: prior to his marriage, M-I- revealed that her father had sexually abused her; M-I- told him she fought back but that her father held her so tight she could not do anything; when he learned of this he encouraged her to report this criminal activity to the police, but she did not; despite her situation he realized he loved her and wanted to help her; after he entered the United States, the couple married and he moved in with M-I- and her father; M-I-'s father took control of financial and immigration matters for them; and the sexual abuse of M-I- continued so rather than being able to help M-I- the petitioner felt that he was "sucked into the situation." The petitioner also declared that: he found himself under the control of both M-I- and her father; her father withheld necessary documentation for his immigration status and confiscated his work authorization card; M-I- was not assertive and yielded to her father's demands; and as 2007 began, the fighting between the two of them continued and M-I- eventually returned to Pakistan to avoid the situation with her father. The petitioner noted that he left the house and moved in with a friend of his but that M-I-'s father continued to hold his luggage and documentation. The petitioner stated that the two of them continuously took advantage of him and implicitly and explicitly threatened him with various punishments if he did not cooperate with them and their illicit behavior and that M-I- had abandoned him on the command of her father at a time he needed her most.

The petitioner also provided a psychological evaluation prepared by based on his interviews of the petitioner on March 20 and 22 of 2007. noted the petitioner's report that: M-I- and her father were handling his immigration papers, but he later learned that they were trying to thwart his efforts to obtain legal status in the United States; M-I- spent more nights sleeping in her father's bedroom than the petitioner's bedroom; M-I- struck the petitioner on two occasions; she threatened him with a knife; and she forced him to have sex. also noted that the petitioner reported that: when he confronted M-I-'s father about his sexual abuse of M-I- on January 2 or 3 of 2007, both M-I- and her father denied it and she said that she had made it up to get his attention; M-I- and her father kicked him out of the house and refused to give him his luggage; he called the police who told him he needed to obtain a court order to acquire his possessions; and he lived with a friend for a month and then found his own apartment. concluded that the petitioner exhibited moderate depression and very high social distress and diagnosed the petitioner with post traumatic stress disorder. found that the data supported the petitioner's claim that he was emotionally distraught and suffering from the effects of domestic abuse. noted that the petitioner required regular psychotherapy.

The record also included a request for a police officer's report regarding an incident that occurred on January 7, 2007.

In the RFE, the director noted inconsistencies in the petitioner's statement to United States Citizenship and Immigration Services (USCIS) and to and asked for evidence corroborating the petitioner's claim of abuse. In response to the RFE, the petitioner provided

four affidavits in support of his claim that he had been subjected to battery and extreme cruelty. In the affidavit of , she declared that: she is M-I-'s relative; she found M-I- to be rude and aggressive with the petitioner; M-I- pushed the petitioner hard one time; she saw M-I- almost drive her car over the petitioner, but he jumped aside and it looked like she had done it on purpose. In the affidavit of declared that: he had known both M-I- and the petitioner since 2004; M-I- and the petitioner did not sleep in the same room due to the fact that she always slept with her dad; M-I- discussed her and her father's sexual relationship with him; she explained that she was so depressed she just wanted to leave the house; and she took the car and the petitioner was afraid that she would get in an accident so tried to stop her but M-I- did not stop and hit the petitioner with the car. In the affidavit of declared that: he met the petitioner in January 2007 around the time he was separating from M-I-; he accompanied the petitioner to M-I-'s house to get his clothes but M-I- refused to give the petitioner his clothes so the petitioner called the police; the police came to the house two hours later but after talking with M-I- told the petitioner that he must get a court order to get his belongings; and the petitioner moved into with him until he found a place to live. In the affidavit of the petitioner's father, the petitioner's father declared that his son and M-I- are separated because of M-I-'s sexual relationship with her father.

On August 11, 2009, the director determined that the petitioner's testimony was contradictory and that the affidavits submitted also included statements that contradicted the petitioner's testimony. The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty by his spouse.

On motion, the petitioner submitted a second personal statement dated September 11, 2009. The petitioner stated that M-I- was and continued to be involved in an incestuous and sexual relationship with her father and that M-I- became an abuser to the petitioner. The petitioner indicated that M-I-'s decision to remain in the adulterous relationship with her father traumatized him and caused him mental anguish. The petitioner noted that he had already mentioned the physical abuse and the threats and this coupled with M-I-'s adulterous relationship with her father constituted extreme cruelty. The petitioner referenced that M-I- married someone else in Pakistan while she was still married to him.

Upon review of the motion, the director affirmed his decision to deny the petition. On appeal, counsel submits a brief and the petitioner's June 13, 2010 personal statement. In the petitioner's statement on appeal, he declares that: after their marriage, M-I-'s father did not want them to live together until the couple had a marriage reception on August 20, 2007; he had intimate relations with his wife prior to this date and M-I-'s father beat her and slapped and threatened the petitioner when he tried to intervene; M-I-'s father then delayed completion of the petitioner's green card application; after August 20, 2007, the petitioner lived with M-I- and her father; after a claimed illness by M-I-'s father, M-I- asked if she could stay in her father's room and the petitioner reluctantly agreed; the number of nights that M-I- stayed in her father's room increased; the petitioner and M-I- began having daily arguments regarding this situation; on one occasion, M-I- said she wanted a divorce and got into her car and despite the petitioner asking her not to drive, she drove the car into him and later he and her father found her driving the roads and brought her home; the next night, M-I- brought a knife into his room and threatened to kill herself if he did not give her a divorce; after the petitioner saw an immigration attorney, M-I-

became angry, yelled at him and began pushing him, and screamed for him to leave the house and that she felt like killing him – but he had nowhere to go so he did not leave; M-I- and her father began to blame the petitioner for the marital problems the couple was having; M-I- began demanding property from him; in mid-November, M-I- and her father threatened to not provide additional evidence to the immigration authorities unless he transferred some property into M-I-'s name; and the petitioner realized that M-I- and her father were having sexual relations. The petitioner reported that he threatened M-I- that he would confront M-I-'s father about his sexual relationship with his daughter and M-I- started yelling at him, threatened to destroy his life and stop his green card application, and began to push and choke him and slap his face. The petitioner further reported that he did confront his father-in-law about his relationship with his daughter and his father-in-law denied the relationship. The petitioner indicated that for the next week he lived at the store where he worked and then moved in with a friend who accompanied him to M-I-'s house to get his belongings. The petitioner claims that he came to the United States to marry M-I- to protect her from her father, but she engaged in consensual sex with her father and conspired with her father to obtain property from the petitioner, as well as threatening and attempting to sabotage his immigration status in the United States.

On appeal, counsel for the petitioner asserts that M-I- and her father conspired against the petitioner, that M-I- willingly engaged in a sexual relationship with her father, and that M-I- and her father sought property from the petitioner and used the petitioner's immigration status in the United States to control him.

Upon review of the record, the petitioner has not set forth a consistent account of his relationship with M-I- and has not provided probative and consistent testimony regarding specific incidents and events that compel a conclusion that he was subjected to battery or extreme cruelty as defined in the statute and regulation. The petitioner's initial statement focuses on M-I-'s father and his control of his daughter. He notes specifically that M-I- was not assertive and yielded to her father and that she eventually left the United States to avoid the situation with her father. Although the petitioner indicates that he was "sucked into the situation" and found himself under the control of both M-I- and her father, he does not provide any probative information detailing the circumstances of how M-I- contributed to or instigated the actions of her father against him.

As the director observed the petitioner did not reference any incidents of physical battery perpetrated by M-I- against him in his initial statement. The director noted that the petitioner's statement to USCIS differed from the information he had provided to which included report that M-I- had struck the petitioner twice, had threatened him with a knife and had forced him to have sex. The petitioner, in his second personal statement submitted on motion, referred to physical abuse he had already mentioned but did not further elaborate on any incident of battery. Only on appeal does the petitioner provide his version of incidents that were reported to In that regard, the petitioner indicates that M-I- threatened to kill herself with a knife but does not indicate that she directly threatened the petitioner with a knife which contradicts report. The petitioner does not provide any information regarding forced intimacy even though he allegedly indicated to that M-I- forced him to have sex. Regarding the two incidents of being struck by M-I- as reported to , the petitioner states generally on appeal that after he saw an immigration attorney, M-I- became angry, yelled, and pushed him and that on another occasion when he threatened to confront her

father about M-I-'s and her father's sexual intimacy she pushed and choked him and slapped his face. Although the petitioner provided more information regarding the two incidents of being struck by M-I- than he initially reported to the information provided depicts an acrimonious argument between two individuals in a mutually combative situation. The petitioner's statement on appeal is insufficient to conclude that the petitioner was subjected to battery perpetrated by M-I-. Similarly, the petitioner for the first time on appeal provides his version of the event when he was allegedly struck by a car driven by M-I-. This incident was first mentioned in affidavits submitted by others on the petitioner's behalf in response to the director's RFE. As the director observed, one affiant described the event as accidental and the second affiant speculated on M-I-'s intent when describing the incident. The petitioner does not discuss this incident until his statement on appeal wherein he describes an argument between the couple and M-I-'s distress and attempt to leave in a car. His statement does not include sufficient information to conclude that M-I- purposely drove in to him.

Upon review of the totality of the record regarding the claimed incidents of battery, the petitioner initially failed to set forth any incidents of battery, report did not accurately and adequately reflect the circumstances of the alleged battery, the petitioner does not explain his failure to initially describe the alleged incidents of battery, and his description of these incidents on appeal fails to provide definitive detail regarding the conflicts. Thus, the record is insufficient to establish that M-I- subjected the petitioner to battery.

Upon review of the petitioner's claim that he was subjected to extreme cruelty by M-I-, his initial statement focused on her sexual relationship with her father and her father's attempts to control both of them. The petitioner concluded his statement by indicating that M-I- and her father continuously took advantage of him and implicitly and explicitly threatened him with various punishments if he did not cooperate with them and that M-I- abandoned him when he needed her the most. In his statement to the petitioner indicated that he later learned that M-I- and her father were trying to thwart his efforts to obtain legal status in the United States. In the petitioner's second statement to USCIS, he again focuses on M-I-'s decision to remain in an adulterous relationship with her father but does not describe any specific events when M-I- tried to control him. On appeal, the petitioner adds that M-I-'s father delayed completion of his green card application and that M-I- and her father started demanding property from him and that M-I-'s father threatened he would not provide additional evidence for the petitioner's immigration matter unless property was transferred into M-I-'s name. The petitioner also acknowledges that he threatened M-I- and the petitioner's father with revelations regarding M-I-'s sexual intimacy with his daughter which escalated into a situation where the petitioner had to leave M-I-'s and her father's house.

Upon review of the petitioner's statements, the petitioner initially provides no probative information that demonstrates he was subjected to the control of M-I- or that M-I- provided the motivation for her father to attempt to exercise control over the petitioner. The record before the director simply revealed the petitioner's belief that his wife had an adulterous relationship with her father and the petitioner's speculation that his father-in-law interfered with his attempts to obtain legal immigration status in the United States. The petitioner does not offer descriptive testimonial evidence of specific events that support his belief. On appeal, the petitioner adds information that demonstrates that his four-month marriage with M-I- included threats and

denials regarding the sexual intimacy between M-I- and her father. The petitioner also references threats regarding his immigration status; however, he does not provide specific detail regarding the alleged threats, including when or how often they occurred. The petitioner does not provide probative testimonial evidence establishing that M-I-'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 M-I-'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)).

A review of the psychological evaluation prepared by reveals that the evaluation was based on two interviews of unspecified length conducted on March 20 and March 22 of 2007. As observed above, report included inaccurate information regarding the alleged actions of M-I- against the petitioner. The record does not indicate that had an established relationship with the petitioner and thus, his report fails to reflect the insight and elaboration commensurate with such a relationship. In addition, does not causally connect his diagnosis of the petitioner's moderate depression, very high social distress, and post traumatic stress disorder to specifically described behavior on the part of the petitioner's spouse. Rather, concludes that the petitioner suffered from the effects of domestic abuse, a conclusion based on inaccuracies and incomplete information in the petitioner's statements to him. Moreover, report does not include probative consistent evidence that the petitioner was subjected to battery or extreme cruelty as set out in the statute and regulation. Further, noted that the petitioner required regular psychotherapy but the petitioner has provided no evidence that he sought therapy.

The four affidavits submitted on the petitioner's behalf also lack the descriptive detail necessary to establish that the petitioner in this matter was subjected to battery or extreme cruelty. The affiants do not provide a chronological timeline describing when certain events occurred. The affiants do not consistently detail the circumstances of particular events. The affiants do not provide substantive information regarding how they witnessed specific events. The affiants do not provide probative testimony regarding specific incidents that constitute battery or extreme cruelty as defined in the statute and regulation.

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 M-I-'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 M-I- subjected him to battery or that her actions constituted extreme cruelty as defined in the statute and regulation. M-I-'s alleged sexual relationship with her father, even if true, is insufficient to establish extreme cruelty as set out in the statute and regulation. The petitioner's description of the events occurring in his four-month marriage to M-I- and the circumstances of their interactions regarding her

behavior as described, does not include testimony that demonstrate M-I-'s acts constitute acts of battery or extreme cruelty described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The record is simply insufficient in this regard.

Conclusion

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) in existence when the petition was filed. On remand, the director should address all grounds for the intended denial of the petition.

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.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.