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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  
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Services



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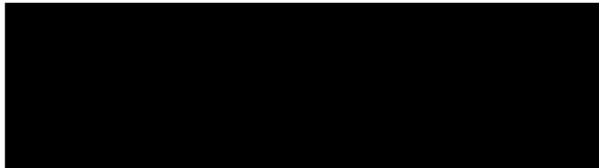
FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date:  
**FEB 22 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:



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 and the matter 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.

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.

*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.

\* \* \*

(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.

*Facts and Procedural History*

The petitioner is a native and citizen of China. He entered the United States on October 9, 1996 on an L-1 visa. On October 28, 2002, the petitioner married K-E-<sup>1</sup>, the claimed abusive United States citizen. On or about March 6, 2003, K-E- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The petitioner and K-E- were interviewed in February 2005. The petitioner reports that K-E- abandoned him in 2006 and did not appear for the second scheduled immigration interview in December 2007. The Form I-130 was denied on December 8, 2007. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on August 8, 2008. On January 12, 2010, 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 K-E-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

*Battery or Extreme Cruelty*

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<sup>1</sup> Name withheld to protect the individual's identity.

In the petitioner's August 5, 2008 statement, the petitioner indicated that about a year after K-E- filed the Form I-130 on his behalf she began to hurt his feelings through her behavior and words. The petitioner noted that K-E- demanded money and when they received the Form I-130 interview notice her demands for money accelerated. The petitioner also stated that K-E- abused their sexual relationship by demanding sex even when he was tired and that when she realized he could not perform, she criticized him by calling him derogatory names. The petitioner indicated further that after their immigration interview in February 2005, K-E- threatened that she would pick up other men who could better satisfy her sexually. The petitioner reported that as this situation continued, his concentration and emotions suffered and he was in two car accidents while he was employed as a limousine driver in September and November of 2004. The petitioner noted further that in November 2006, K-E- told him that she was seeing someone else and she and her new boyfriend came to the petitioner's house to pick up all of K-E-'s belongings.

The initial record also included a psychiatric evaluation dated July 16, 2008, prepared by [REDACTED] attending psychiatrist and [REDACTED] counseling therapist. [REDACTED] noted that a comprehensive assessment was conducted on April 18, April 25, and May 10, 2008 and the petitioner had reported a depressed mood, lack of motivation, being irritable, anxious, and having sleep difficulty; the petitioner also reported that he suffered from sexual dysfunction. [REDACTED] noted that on June 3, 2008, the petitioner's psychiatric evaluation was done and the petitioner was diagnosed with Major Depressive Disorder, Single Episode, Moderate, back pain (herniated disc), and that his psychosocial stressors included: family/significant others, immigration status, financial stress, lack of social support and work-related activities/resources. [REDACTED] also noted that the petitioner had failed to take the recommended medication as directed and that it was important for the petitioner to comply with medication and therapy to remain healthy.

The initial record also included an August 13, 2007 radiology report showing that the petitioner had a disc herniation and August 21, 2007 and January 14, 2008 treatment reports for the petitioner's lower back and left leg pain.

The petitioner provided statements from his mother who resided in China and his brother who resided in Canada declaring that the petitioner had reported that he had experienced marital problems with K-E-. The record also included affidavits signed by [REDACTED] who also declared that the petitioner had told them that he was not happy with marriage to K-E-. [REDACTED] also declared that the petitioner had spoken to them of his marital difficulties with K-E-.

In response to the director's RFE, the petitioner provided a second statement dated February 25, 2010. The petitioner again noted that K-E- had extravagant spending habits and that he found it difficult to make enough money to support her lifestyle. The petitioner added that K-E- would force him to have sex when he did not want to and to use more strength than he was physically comfortable with and when his sexual dysfunction later became a bigger problem, she would tease and make jokes. The petitioner added that K-E- would hit him in the groin and on one occasion punched him hard in the groin and then blamed him for not fulfilling his duties as a husband. The petitioner also stated his belief that his sexual dysfunction was caused by K-E-'s

abusive sexual requests and “the emotional, psychological, physical, sexual, and financial abuse [he] suffered with her.” The petitioner noted that although his physician had not indicated the cause of his condition, the petitioner believed that it was due to K-E-'s insistence on physically-challenging sexual acts and his attempts to satisfy her so that he would not feel inadequate.

In a second psychological evaluation prepared by [REDACTED] dated February 22, 2010, [REDACTED] reported that the petitioner had terminated his treatment with [REDACTED] in June 2009 as he had not found their treatment helpful. [REDACTED] reported that the petitioner was still upset by his inability to have sexual arousal and by his immigration problems. [REDACTED] recommended that the petitioner have individual psychotherapy to improve his mood and cope with stresses related to his marital problem, sexual dysfunction, and immigration problem. [REDACTED] noted that a diagnosis of sexual dysfunction is deferred, pending results of the petitioner's physical check-up.

The director denied the petition on July 22, 2010. The director noted that the petitioner had presented inconsistent information in his two statements, by adding generally described instances of battery in his second statement that had not been mentioned in the first statement and had presented inconsistent information to his two therapists. The director determined that the record did not include evidence that the petitioner's spouse's demand for money or her extreme sexual needs constituted battery or extreme cruelty.

On appeal, counsel for the petitioner asserts that the petitioner raised the issue of his sexual dysfunction, not to prove physical abuse, but rather to show severe emotional abuse. Counsel contends that the petitioner suffered severe emotional stress when the problem occurred and claims that the petitioner's spouse's derogatory name calling and threats to find another man contributed to the petitioner's emotional pain.

We find no error in the director's assessment of the relevant evidence. The petitioner's initial statement did not provide any probative information demonstrating that his wife's behavior constituted battery or extreme cruelty. The initial evaluation submitted on his behalf did not causally connect the petitioner's diagnosis of Major Depressive Disorder with any specific actions or behavior by his spouse. In response to the director's RFE, the petitioner added incidents of alleged physical abuse and speculated that his sexual dysfunction was attributable to his wife's actions and behavior; however, his new therapist deferred a diagnosis of sexual dysfunction pending results of the petitioner's physical check-up. As the director noted, the addition of claims of physical abuse in this matter reflects an escalation of the nature and type of claimed abuse and undermines the petitioner's credibility. Although the petitioner's spouse called him derogatory names, spent money extravagantly, and abandoned the petitioner for another man, these acts do not constitute extreme cruelty under the statute and regulation.

The statements submitted by the petitioner's friends and relatives on his behalf do not disclose any incident or specific behavior of which they were personally aware that constitutes battery or extreme cruelty under the statute and regulation. While we acknowledge the petitioner's emotional pain when he was called derogatory names, teased, and abandoned by his wife, these acts do not constitute battery or extreme cruelty under the statute and regulation. Upon review of

the petitioner's statements and the statements and evaluations submitted on his behalf, the record does not demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that K-E'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 and the statements he made to others lack the consistent detail necessary to establish that K-E- subjected him to battery or that her actions constituted extreme cruelty as defined in the statute and regulation. The petitioner has failed to establish that K-E'-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-E-'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 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). In this matter, the petitioner has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by K-E-.

#### *Conclusion*

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