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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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39

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JAN 04 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 the \$630 fee. 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 Administration 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 a United States citizen.

On July 16, 2010, the director denied the petition, determining that the petitioner had failed to establish that he had been subjected to battery or extreme cruelty by her United States citizen spouse.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and submits additional documentation.

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 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 further explained 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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(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 Kenya. He entered the United States as an F-1 student on December 22, 2004. He married C-J-<sup>1</sup>, the claimed abusive United States citizen spouse on September 4, 2007. On or about April 27, 2008, C-J- 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 December 21, 2009, the Form I-130 and Form I-485 were denied. On December 7, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The director issued a request for evidence (RFE) on February 22, 2010 and the petitioner provided a response. On July 16, 2010, the director denied the Form I-360, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse. Counsel for the petitioner filed a timely appeal.

*Abuse*

In an undated statement attached to the Form I-360, the petitioner stated that: a few months subsequent to May 2008, after he had started helping his parents financially, C-J-started spending money from their joint account; C-J- "maxed out" two credit cards in his name with her shopping sprees; she stopped making car

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

payments on a loan he had cosigned with her; she called him derogatory names; and used their constant arguments and fights over financial problems to stay out late. The petitioner noted that: when he confronted her with his suspicion about her infidelity, she insulted his sexual prowess; in early 2009 C-J- became pregnant; she refused to put his name on the child's birth certificate when it was born in September 2009; and she caused arguments over petty issues which prompted his neighbors to complain to the apartment management.

The initial record also included a November 13, 2009 letter, signed by [REDACTED], the petitioner's co-worker, who indicated that the petitioner appeared to be under stress. In a July 8, 2009 letter signed by [REDACTED] the Assistant Manager of the petitioner's apartment building, Ms. [REDACTED] noted that the petitioner's neighbors had brought to her attention that the petitioner and his wife had "regular domestic fights" which interrupted the peace at the complex. The record also included two statements, one signed by C-J- and one signed by her mother, both containing similar language regarding C-J-'s complaints about the marriage and what the petitioner could do to improve the relationship. Her complaints included the petitioner spending more time with his friends than with family, spending money without consulting her, investing his resources in assisting his extended family at the expense of his own family, and claiming that she had an affair with a co-worker which was not true. In an October 5, 2009 statement, the petitioner acknowledged C-J-'s complaints and resolved to stop spending most of his time with friends, to agree on financial decisions, and get more involved in doing household chores.

In response to the director's RFE, the petitioner provided a statement dated May 10, 2009. The petitioner reiterated that the couple had arguments over their financial situation. The petitioner added that: by December 2008, when her car was repossessed, C-J- became verbally abusive; she criticized and ridiculed him and gave him orders in front of friends; she demonized him to her daughter; C-J- started staying out late leaving him to take care of her kids, and coming home drunk; and she told mutual friends that they were not welcome in their house. The petitioner further added that on one occasion, she started hitting him and trying to take control of the car when he was driving and once they arrived at the function, she called him names, grabbed the car keys and left him at the party. The petitioner also indicated that in September 2009, C-J- told him the child she was carrying was not his child.

The petitioner also provided statements submitted on his behalf. In the May 11, 2010 statement signed by [REDACTED] declared that the petitioner had told him of his marital difficulties relating to his sex life and that in April 2009, the petitioner needed temporary accommodation due to a misunderstanding he had with his wife. In [REDACTED] June 8, 2010 affidavit, he declared that: he was aware of the petitioner's family troubles; he witnessed a small argument that erupted between the petitioner and C-J- and that C-J- called the petitioner names; and in the beginning of 2009, his wife received a call from C-J- who told his wife that he and his wife were no longer welcome in their home. In the undated statement of [REDACTED] Mr. [REDACTED] indicated that the petitioner had told him that he was having marital problems and that C-J- was abusive to him in public. In an April 19, 2010 letter, [REDACTED] noted that she and C-J- had been friends for six years and that in early 2009, C-J- and the petitioner had been having on and off issues in their marriage. In an April 13, 2010 letter, [REDACTED], indicated that the petitioner and C-J- sought pastoral advice on their marriage problems on three occasions. The petitioner also provided a statement from his mother, who noted that the petitioner had told her of his marital difficulties.

In the director's July 16, 2010 decision, the director observed that the petitioner had been apprised of a report prepared by an officer of the Department of Homeland Security (DHS) which showed that the petitioner had misrepresented himself to the officer when he visited the petitioner's residence. As the director set out the misrepresentations made by the petitioner and the petitioner's explanations regarding the misrepresentations, they will not be repeated here. Upon review of the misrepresentations and the petitioner's explanations, the director found that the petitioner's explanations were not persuasive and concluded that the petitioner's testimony was unreliable. The director noted that he had reviewed the statements submitted on the petitioner's behalf and that the declarants did not indicate that they had witnessed specific acts of abuse that allowed a conclusion that the petitioner had been subjected to battery or extreme cruelty. The director determined that the record did not contain satisfactory evidence demonstrating the petitioner's qualification under the abuse requirement.

On appeal, counsel for the petitioner notes that the petitioner's untruthful statements to the DHS investigator were wrong and that the petitioner sincerely regrets making the false statements and has now provided a written account of the of the cruel experiences he suffered in his marriage. The petitioner in his new statement on appeal adds that: every time he and C-J- had an argument, the argument would escalate to the point of her pushing and shoving him with the intention of calling the police on him; he believes C-J- maliciously tried to isolate him; in one of her rages, she threw a glass of water at him; and she told the petitioner after her third child was born that the child was not his child.

Counsel also provides a second statement from [REDACTED], dated July 27, 2010. Mr. [REDACTED] adds that he witnessed first hand unpleasant incidents between the petitioner and C-J-, including a visit with friends in mid 2009 when he observed an argument between the petitioner and C-J- and C-J- started cursing and insulting the petitioner, so the friends left. In a second statement from [REDACTED], dated August 11, 2010, Mr. [REDACTED] adds that: the petitioner's spouse began dropping in at his workplace unexpectedly; he would overhear the petitioner's exasperated conversation with C-J- who constantly called him; and in early 2009, when C-J- came to the work place she used loud and demeaning language when telling the petitioner he needed to hurry and the manager had to ask them to leave. In a statement signed by [REDACTED] dated August 2, 2010, Ms. [REDACTED] declares that: she witnessed C-J- use profane words to refer to the petitioner; and when she ran into the couple in a department store, she saw C-J- create a scene by calling the petitioner names in an argument regarding their financial situation. Counsel also includes a handwritten note signed by [REDACTED] M.D., Internal Medicine, indicating that the petitioner had been a patient since June 23, 2009 for treatment of stress and insomnia.

Upon review of the petitioner's statements in support of the petition, we observe that the petitioner has gradually escalated the nature and severity of the abuse with each of his responses. Initially, the petitioner generally referenced arguments the couple had regarding finances and indicated that his spouse stayed out late, she insulted his sexual prowess, and that he was suspicious that she was having an affair. In response to the director's RFE, the petitioner, although continuing to indicate that his spouse calls him derogatory names, adds an incident involving hitting while he was driving. On appeal, the petitioner further escalates the nature of the alleged abuse by stating that every time the couple had an argument, the argument would escalate to include pushing and shoving. The petitioner also adds his belief that his spouse was maliciously trying to isolate him. Thus, the petitioner's initial claim that his spouse would call him names, the couple

would argue over financial matters, and he suspected her infidelity, has escalated to the petitioner's claim that his spouse would hit, shove and grab, and throw a glass of water at him. It is the escalation of the nature and type of abuse that undermines the credibility of the petitioner's statements. It appears that the petitioner, in response to doubts expressed by United States Citizenship and Immigration Services (USCIS) regarding the claimed abuse, has added incidents that he believes may constitute battery. However, in addition to the escalation of the petitioner's claim, which continues to undermine the credibility of the statements, the petitioner fails to provide detailed and consistent testimony that assists in allowing a conclusion that the incidents of battery actually occurred.

The petitioner has not provided probative statements that establish that he was subjected to extreme cruelty. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient, consistent detail of specific events and incidents to result in such a conclusion. The petitioner's description of mutually combative arguments, as well as C-J-'s derogatory name calling, insulting of his sexual prowess, and her infidelity, fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that her 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. Nor did the petitioner demonstrate that her nonviolent actions and rejection of his intimacy constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence. The petitioner has not provided probative examples of incidents that constitute extreme cruelty as defined by the statute and regulation.

Similarly, the initial statements provided by others on the petitioner's behalf do not include any incidents that constitute extreme cruelty. The initial statements of the declarants on the petitioner's behalf do not provide any detailed information regarding specific incidents they witnessed. Only [REDACTED] indicates that he witnessed a small argument between the couple and that his wife was asked not to visit the couple; however, the information provided is insufficient to determine that C-J-'s actions constituted extreme cruelty as set out in the statute and regulation. Neither [REDACTED] explains their elaboration of incidents to include incidents actually witnessed on appeal. Again, testimony that is not initially forthcoming and later added with no explanation undermines the veracity of the statements. Moreover, neither incident generally described by [REDACTED] and [REDACTED] include actions by C-J- that constitute extreme cruelty. Likewise, [REDACTED] describes an embarrassing public argument she witnessed but does not describe any actions on the part of the petitioner's spouse that constitute extreme cruelty as defined in the statute and regulation.

In *Hernandez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> Cir. 2004), the Court noted that Congress required a showing of extreme cruelty in order to ensure that section 244(a)(3) of the Act protected against the extreme concept of domestic violence, rather than mere unkindness. As generally described, C-J-'s actions, while maybe unkind and inconsiderate, do not rise to the level of the 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. The claims made by the petitioner and the general statements submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that C-J-'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 simply insufficient in this regard.

Upon review of the documentation in the record, we concur with the director's ultimate determination and find that the petitioner and the individuals who submitted testimony on his behalf have not provided consistent probative testimony establishing that he was subjected to battery or extreme cruelty as defined in the statute and regulation. In this matter, the petitioner has not provided such evidence. The petitioner does not provide the requisite detail to demonstrate that any of C-J-'s alleged actions are comparable to the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

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.