

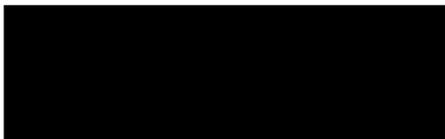
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: VERMONT SERVICE CENTER

Date:

JAN 20 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 service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be granted. The previous decision of the AAO, dated February 3, 2010, will be affirmed and the petition will remain denied.

The petitioner seeks immigrant classification under 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.

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated February 3, 2010, only certain facts will be repeated as necessary here. In this case, the petitioner is a native and citizen of Trinidad. On June 13, 2003, the petitioner married L-L¹, a U.S. citizen, in the City of New York. The record contains a copy of the petitioner and L-L's divorce decree issued on February 6, 2007. On September 19, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The director denied the petition on May 27, 2009, finding that the petitioner failed to establish that his spouse subjected him to battery or extreme cruelty during their marriage. In its February 3, 2010 decision on appeal, the AAO concurred with the director's determination and found beyond the decision of the director that the petitioner had not established that he has a qualifying relationship as the spouse, intended spouse, or former spouse of a U.S. citizen and is eligible for immigrant classification based upon a qualifying relationship with his former wife.

On motion, counsel states, in part, that "the totality of the circumstances of extreme cruelty detailed in the respondent's application and the supporting affidavits and documentation, establish a substantial record of a compelling case of extreme cruelty." Counsel also states that the AAO's finding "that the respondent failed to make a causal connection between his divorce and any abuse of extreme cruelty is

¹ Name withheld to protect individual's identity.

not supported by the facts in the record.” Counsel also states that “though not spelled out in his petition, but a part of this record, the respondent alleged physical abuse, violence, by his former spouse in his divorce complaint . . . allegations were not disputed by the spouse who was served on September 25, 2006.” As supporting documentation, counsel submits the following: an affidavit from the petitioner, dated February 26, 2010; an affidavit from the petitioner’s friend and coworker, [REDACTED] dated February 24, 2010; an affidavit from the petitioner’s sister-in-law, [REDACTED] dated February 25, 2010; an affidavit from the petitioner’s brother, [REDACTED] dated February 25, 2010; an undated, partial copy of the “Verified Complaint Action for Divorce” listing the petitioner as the plaintiff and L-L- as the defendant; a “Note of Issue - Uncontested Divorce” for the same, filed on March 2, 2007; and copies of previously submitted documentation.

Battery or Extreme Cruelty

In its February 3, 2010 decision, the AAO found the evidence submitted by the petitioner and on the petitioner’s behalf insufficient to establish that the petitioner’s former wife subjected him to battery or extreme cruelty during their marriage. The relevant evidence, including the petitioner’s personal statement dated November 21, 2007, the petitioner’s affidavit dated September 22, 2009, the affidavit from the petitioner’s brother, [REDACTED], dated March 3, 2008, and the affidavit from the petitioner’s friend, [REDACTED], dated March 16, 2009, are adequately discussed by the AAO in its February 3, 2010 decision and need not be repeated in detail here. The AAO found that the petitioner failed to describe in probative detail specific threatening or controlling behavior of his former wife that constitutes battery or extreme cruelty. The AAO also found that the petitioner’s claims regarding the behavior of his former wife, including her infidelity and name calling, failed to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, or that his former wife’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. The AAO also found that the affidavits submitted on the petitioner’s behalf contained primarily general information and were lacking in detail regarding the circumstances of any claimed abuse. The AAO concluded that the relevant evidence failed to demonstrate that the petitioner was subjected to battery or extreme cruelty by his former spouse.

On motion, counsel submits an affidavit from the petitioner, dated February 26, 2010, in which he states that his former spouse was violent with him on several occasions, including on December 26, 2003, May 15, 2004, and February 14, 2005, when she pushed him and hit him in the face. For the remainder of this affidavit, the petitioner primarily reiterates the information from his September 22, 2009 affidavit, which was discussed by the AAO in its February 3, 2010 decision and need not be repeated in detail here. The petitioner also asserts that he did not expect to divorce his former spouse or file the instant petition, and thus he did not keep a diary of the specific dates of his former spouse’s acts of extreme mental cruelty or violence against him, and that his former spouse “loudly denounced [him] in front of [his] brother for wanting to attend the West Indian Day parade,” which caused him “great mental pain.”

Counsel also submits an affidavit from the petitioner’s friend and coworker, [REDACTED] dated

February 24, 2010, who states, in part, that the petitioner was subjected to extreme mental cruelty by his former spouse, and that he attended their wedding reception and visited them several times at their apartment. [REDACTED] states that the petitioner and his former spouse seemed happy together but "over time all that happiness began to disappear." [REDACTED] states that he asked the petitioner what was wrong after the petitioner began losing weight and showing up at work with red eyes, whereupon the petitioner told him that "he and [L-L] were having problems because she was disappearing from the apartment for several days at a time and lied to him constantly . . ." [REDACTED] also states that when he visited the petitioner and L-L- on a few occasions in 2005, they "were always quarreling and she would call him dirty names and curse him about his West Indian origin and use plenty of profanity." [REDACTED] explains that in July 2005, he learned from the petitioner that L-L-'s baby was not the petitioner's and that L-L- "was driving him out of his mind." [REDACTED] states that he encouraged the petitioner to see a doctor due to his mental state and weight loss.

Counsel also submits an affidavit from the petitioner's sister-in-law, [REDACTED] dated February 25, 2010, who states, in part, that she and her husband visited the petitioner and his former wife at their apartment several times after their marriage in 2003, and that the petitioner and his former wife also visited her and her husband on a few occasions. [REDACTED] states that the petitioner and his former wife seemed happy but "over time . . . [they] started to quarrel with each other . . ." [REDACTED] states that she witnessed L-L- cursing and abusing the petitioner on September 5, 2005, when he wanted to go to the West Indian Labor Day parade, and that she "subsequently learned from [the petitioner] that this kind of verbal abuse had been going on for some time." [REDACTED] states that the petitioner began to lose weight and became unhappy, and that they stopped visiting each other "because [L-L-'s] behavior was not right." [REDACTED] states that the petitioner became more withdrawn, and that he told her about L-L-'s "very cruel" behavior, including having another man's baby. [REDACTED] explains that she tried to persuade the petitioner to see a doctor before he went crazy.

Counsel also submits a second affidavit from the petitioner's brother, [REDACTED], dated February 25, 2010, who states, in part, that the petitioner and his former wife were happy together and that he and his wife visited them at their apartment on several occasions including their anniversary in 2004 and the petitioner's birthday in 2004 and 2005. [REDACTED] also states that, several months after their marriage, "tensions and signs of unhappiness between the couple started happening." [REDACTED] mentions the West Indian Labor Day incident, which has been adequately discussed by the petitioner and [REDACTED] above and need not be repeated again. [REDACTED] also states that in October 2005, he witnessed L-L- throw the petitioner's clothes and personal belongings out the window after she had become "loud, boisterous and disrespectful" to him, and that, after that incident, he was too embarrassed to visit them anymore. Finally, [REDACTED] states that the petitioner confided in him that L-L-'s baby was not his.

Counsel also submits an undated, partial copy of the "Verified Complaint Action for Divorce" and the "Note of Issue - Uncontested Divorce" filed on March 2, 2007, the first of which describes the grounds for divorce as "cruel and inhuman treatment" based on the following:

[The beneficiary] committed numerous acts in the following typical manner which have been

cruel and inhuman as to render it unsafe and improper for [the petitioner] to cohabit with [the beneficiary]: On or about May 15, 2004, the [beneficiary] struck the [petitioner] and pushed [him] against a wall. On or about December 26, 2003 the [beneficiary] grabbed the [petitioner] twisting 'her' arm and caused the [petitioner] to sustain bodily injury. On or about February 14, 2005, the [beneficiary] pushed, pulled and manhandled the [petitioner] causing fright, pain and suffering to the [the petitioner]. . . .

There is an inconsistency between the "Verified Complaint of Divorce" and the petitioner's prior statements in the record. The petitioner did not mention the alleged physical abuse described in the "Verified Complaint of Divorce," and has described these act only in his affidavit submitted on motion. Such inconsistency undermines the veracity of his claim that these events actually occurred. It is additionally noted that the petitioner has not provided any evidence that the standard for cruel and inhuman treatment under New York divorce law is the same standard for battery or extreme cruelty in found at 8 C.F.R. § 204.2(c).

The affidavits submitted on motion do not support a finding that the petitioner was subjected to battery or extreme cruelty. The affiants state generally that they witnessed the petitioner's former spouse calling the petitioner derogatory names and insulting him. The petitioner's brother adds that the petitioner's former spouse threw the petitioner's clothes and personal belongings out of the window. In *Heranadez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004) the Court noted that "every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence" and further 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. Upon review of the record in its entirety, the claims made by the petitioner and on his behalf fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that his former spouse'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 on his behalf do not establish that his former spouse subjected him to psychological, sexual abuse or exploitation, or that her actions were part of an overall pattern of violence. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

As the petitioner has failed to establish the requisite abuse, he also has failed to establish a qualifying relationship as the spouse, intended spouse, or former spouse of a U.S. citizen and eligibility for immigrant classification based upon a qualifying relationship with his former wife, because he filed this Form I-360 petition after his divorce, and no causal connection between his divorce and any abuse has been made. Therefore, as stated by the AAO, he is unable to establish that he has a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen and that he is eligible for classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (bb). He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

Upon review of totality of the evidence, the petitioner has not demonstrated that he was battered or subjected to extreme cruelty by his former spouse during their marriage and that he has a qualifying relationship as the spouse, intended spouse, or former spouse of a U.S. citizen and is eligible for immigrant classification based upon a qualifying relationship with his former wife. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 previous decision of the AAO, dated February 3, 2010, will be affirmed and the petition will remain denied.

ORDER: The decision of the AAO, dated February 3, 2010, is affirmed. The petition remains denied.