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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

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 20 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.

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 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.

On July 28, 2010, the director denied the petition, determining that the petitioner had not established he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse and had not established that he entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and additional documents.

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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Dominican Republic. He entered the United States in Puerto Rico on or about December 18, 1995 without inspection. On June 16, 2004, the petitioner married M-V-[1], the claimed abusive United States citizen. On September 8, 2008, 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-V- from June 2004 to February 2008. On March 24, 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 M-V- and that he had not established that he had entered into the marriage in good faith. The petitioner timely submitted an appeal and additional evidence.

Abuse

The petitioner initially did not submit a personal statement. The initial record included an Ex Parte Restraining Order issued on April 24, 2008 valid from April 24, 2008 to May 12, 2008 against M-V- and was extended once to May 19, 2008. The restraining order did not provide any information regarding specific incidents of abuse. The initial record also included a psychological report prepared by [redacted] noted that the couple "met and married fast" and "[i]mmediately at the beginning of the marriage begun a dysfunctional dynamic that didn't allow for an adequate adjustment." [redacted] opined: "[a]pparently the cultural and social dysfunction between them difficult the relationship in all the fundamental level of the marriage." [redacted] indicated that the petitioner reported that his spouse constantly humiliated him both in private and in public, that she ridiculed him by screaming that he was not enough man for her, and that she rejected him by not wanting to go out with him in public, saying she was ashamed of him. [redacted] indicated further that even after the petitioner left the home and the couple had been separated for four months, the petitioner reported that when his spouse saw him in the street she screamed at him and called him obscene names. Thus, the petitioner obtained a restraining order against her. [redacted] noted that the petitioner suffered from damage to "the auto concept," damage to his self esteem, a high level of anxiety, and a high grade of frustration.

In response to the director's RFE, the petitioner provided an April 29, 2010 personal statement in which he declared that: the marriage began to worsen; M-V- denigrated him as a person; and she locked him out of the house which led to his request for a protection order against her. The petitioner noted that at some point his spouse would search for him to insult him and denigrate him when he was with friends. The petitioner indicated that he filed for divorce on November 30, 2009 which was granted based on cruel treatment. The record does not include a copy of the divorce decree. The petitioner also provided an April 22, 2010 affidavit signed by [redacted] who declared: that she lived on the same street as the petitioner and M-V- and that she noticed that on occasions M-V- would make references to the petitioner's nationality and lack of documentation. The record also included a letter signed by [redacted], who

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

indicated that the petitioner had been under his treatment since 2008 due to depression and gastritis and observed that the petitioner suffered abdominal problems as a result of depression.

Based on the above information, the director determined that the petitioner had not submitted sufficient evidence demonstrating that he had been subjected to abuse or extreme cruelty.

On appeal, counsel for the petitioner asserts that the evidence submitted was sufficient and provides an August 6, 2010 affidavit signed by declares that: the petitioner and M-V- resided on the lower floor of her apartment; marital problems began between the couple; M-V- was unfaithful and brought men to the apartment; M-V- mistreated the petitioner with bad words and argued with him in the street in front of other persons; and hid papers the petitioner would receive from immigration.

Upon review of the record, the petitioner's statement does not provide the detailed, probative evidence that establishes eligibility for this benefit. The petitioner's statement is general and lacks specific information regarding the claimed abuse. Because the petitioner's statements are critical in establishing extreme cruelty or battery, his statement must include sufficient detail of specific events and incidents to result in a conclusion that he suffered abuse. In this matter, the petitioner has not provided the requisite probative detail regarding the claimed arguments, the circumstances surrounding the claimed humiliation and ridicule, and locking him out of his house. As the petitioner's statements to United States Citizenship and Immigration Services (USCIS) and his therapist are without specific information regarding the claimed abuse, the petitioner's testimony is insufficient to establish eligibility for this benefit on this issue.

Similarly, the affidavits submitted on the petitioner's behalf fail to provide the requisite detail regarding specific instances of battery or extreme cruelty. does not describe any controlling behavior or any instance in specific detail that leads to a conclusion that the petitioner was subjected to battery or extreme cruelty as defined in the statute and regulation. Likewise, generally references that M-V- was unfaithful, mistreated the petitioner with bad words, argued with the petitioner in front of others, and hid immigration papers from him, but fails to provide specific detail of the circumstances of these events.

Upon review of the petitioner's testimony and the affidavits submitted on his behalf, the testimony does not demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that L-V-'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.

Upon review of the psychological report prepared by does not provide a causal connection between the petitioner's suffering from damage to "the auto concept," damage to his self esteem, a high level of anxiety, and a high grade of frustration to specific incidents of battery or extreme cruelty perpetrated by M-V-. Moreover, evaluation lacks sufficient substantive, and probative information indicating that M-V-'s behavior included actual threats, controlling actions, or other abusive behavior that was part of a cycle of psychological or sexual violence.

As the director observed, the record does not include the petitioner's divorce decree, thus there is no probative information regarding the basis of the petitioner's divorce. The restraining order was granted ex parte and does not include any specific claims of battery or extreme cruelty as set out 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-V-'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 him. The petitioner's statement and the statements he made to others lack the consistent detail necessary to establish that M-V- subjected him to battery or that her actions constitute extreme cruelty as defined in the statute and regulation. The petitioner fails to establish that his spouse's actions rose 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.

Good Faith

The petitioner initially did not provide a statement detailing his intent in entering into marriage with M-V-. The initial record only included the petitioner's marriage certificate. The record does include photocopies of handwritten tax returns for the years 2005, 2006, and 2007 but no indication that the tax forms had been filed. The record also includes receipts for what appear to be purchases of furniture in 2004 and 2005 but which do not include sufficient legible information to offer any probative value. The record further includes a sworn statement signed by two of M-V-'s children on October 2, 2008 declaring that the petitioner was their stepfather during the four and a half years he maintained a relationship with their mother, M-V-. In response to the director's RFE, the petitioner also provided his personal statement in which he declared that: he met M-V- through a mutual friend around January 2004; he and M-V- began a friendship relationship and courtship; and he married her about five months later. In the April 22, 2010 affidavit signed by [redacted], she declared that she lived on the same street as the petitioner and M-V- and that she and her husband had the opportunity to spend time together with the petitioner and M-V-.

The director determined that the submitted information was insufficient to establish the petitioner's intent in entering into the marriage. On appeal counsel for the petitioner submits a vehicle registration issued to the petitioner to establish his residence with M-V- and the August 6, 2010 affidavit of [redacted], who declared that: she and another friend introduced M-V- to the petitioner in January 2004; M-V- and the petitioner began a boyfriend/girlfriend relationship; and they married in June 2004 and began to live on the lower floor of her apartment.

Upon review of the totality of the information in the record, the petitioner has not established that he entered into the marriage in good faith. The petitioner does not set forth his intent in probative detail in his statement submitted to USCIS. In addition, the petitioner does not provide any probative detail regarding the circumstances of his courtship and eventual proposal and

marriage to M-V-. The petitioner's testimony provides no basis for determining his intent in entering into the marriage. Similarly, the affidavits of and fail to describe in probative detail any particular incidents where they witnessed the alleged *bona fides* of the petitioner's marital relationship. M-V-'s children's affidavit does not provide the necessary detail that assists in establishing the petitioner's intent in entering into the marriage. The record does not include evidence that the tax returns submitted were actually filed and the furniture receipts lack sufficient information to be probative. Occupying the same residence or receiving mail at a particular location does not establish the petitioner's intent when entering into the marriage.

Although the petitioner's marriage certificate confirms the marital relationship, it does not establish the petitioner's own good faith in entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). The record in this matter lacks sufficient relevant evidence establishing that the petitioner entered into marriage with M-V- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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.