

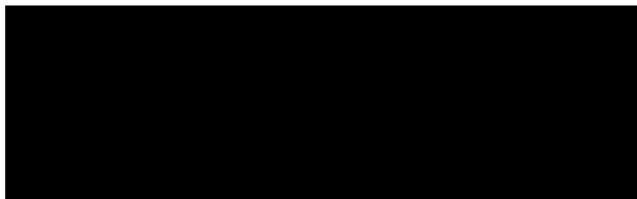
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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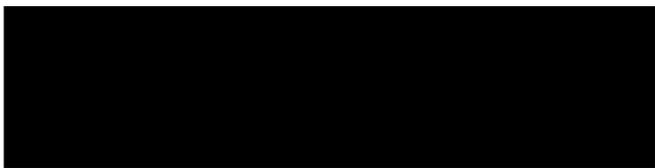
DATE: **JUL 12 2011**

Office: VERMONT SERVICE CENTER FILE: 

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 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 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.

The director determined that the petitioner had not established that he had been battered or subjected to extreme cruelty perpetrated by his United States citizen spouse. On appeal, counsel submits a statement and additional documentation.

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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Facts and Procedural History

The petitioner is a native and citizen of Tunisia. He entered the United States on March 16, 2000 on a B-2 visa, with temporary authorization to remain in the United States until September 15, 2000. He married M-M-¹ the claimed abusive United States citizen on May 19, 2003 in Pennsylvania. On June 18, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that he resided with M-M- from January 2003 until January 2007. On July 2, 2008 and again on November 12, 2009, 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

¹ Name withheld to protect the individual's identity.

had not established that he had been subjected to battery or extreme cruelty perpetrated by M-M-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a statement, and additional documentation in support of the appeal.

Battery or Extreme Cruelty

The petitioner initially provided a December 14, 2007 letter signed by [REDACTED] who declared that the petitioner had been under his medical care as a patient at his clinic. [REDACTED] noted that the petitioner suffered from severe depression, stress, and chronic sleep deprivation and that it was clear that his problems started after his marriage in May 2003. [REDACTED] noted that the petitioner sustained severe mental and psychological trauma after he discovered that his wife had an affair and became pregnant by another man. [REDACTED] noted that the petitioner and his wife separated in 2006.

The initial record also included three statements from the petitioner's friends. [REDACTED] noted that the petitioner was having problems with his wife and while at work, M-M- would call the petitioner and make him upset and stressed. In [REDACTED] March 21, 2008 affidavit, he declared that the couple always argued and that M-M- was verbally abusive and disrespectful. In an undated statement, [REDACTED] indicated that in the last year, the petitioner's wife had abused the petitioner financially and emotionally and that the petitioner stayed with him several times. [REDACTED] noted that while the petitioner was staying with him, M-M- sent the petitioner mean and impolite text messages and asked for money. [REDACTED] also noted that M-M- had addiction problems.

In response to the director's RFE, the petitioner submitted a February 4, 2010 personal statement in which he declared that his problems started with M-M- when she took her children and left them at their father's house unattended. He indicated M-M- was not a good mother but that he missed the children. The petitioner noted that he helped M-M- get a job but she was fired and it was at this time she started doing drugs, partying and disappearing for days on end. The petitioner stated that when he confronted her with her conduct, she promised to change but did not do so. The petitioner reported that M-M- had an affair after about two and one-half years of marriage and he found out that the money he gave M-M- to buy food and pay bills was being used to deal drugs with her new boyfriend. The petitioner indicated that he left at this point and later found out that M-M- had become pregnant with her new boyfriend. The petitioner noted his devastation and stated that his grief came from being blackmailed and mistreated by the person he loved. The petitioner referenced that M-M- would threaten that she would call immigration and he would be deported unless he gave her money and that she demanded money to cooperate with immigration which he refused to pay. The petitioner reported that M-M- was subjected to involuntary treatment for trying to commit suicide and using drugs, and he attached medical records showing that she was admitted for treatment on April 9, 2008.

The petitioner also provided an evaluation dated January 30 and February 1, 2010, prepared by [REDACTED] licensed clinical psychologist. [REDACTED] noted the petitioner's report that he had been suffering from depression beginning in the second year of his marriage towards the end of 2005. [REDACTED] provided a similar description of the

petitioner's social history with M-M- as the petitioner reported in his February 4, 2010 statement. [REDACTED] found that the petitioner was clearly suffering from a Major Depressive Disorder and that he would benefit from continued psychotherapy to work through his feelings about his failed marriage and to set and follow through on new and realistic goals for the future.

The petitioner further submitted affidavits and statements from friends and relatives. M-M-'s brother, who declared that he lived with the couple for over a year, stated that he witnessed several accounts of substance abuse, verbal abuse, and neglect from his sister to the petitioner and that he knew that his sister was unfaithful. [REDACTED] adds in his February 1, 2010 affidavit that he knew the couple was having trouble in their relationship. [REDACTED] declared that he knew the petitioner from socializing at a local coffee shop and the petitioner told him that M-M- was having an affair. [REDACTED] declared that the petitioner reported that he had a lot of arguments with M-M- and that she was using drugs, having an affair, and had a baby from another man. The petitioner's stepdaughter noted that she did not know what happened between the petitioner and her mother.

Based on the information in the record, the director determined that the petitioner had not submitted probative evidence that he had been subjected to battery or extreme cruelty.

On appeal, counsel for the petitioner asserts that the director failed to acknowledge the causal link between the actions of M-M- and the petitioner's depression. Counsel provides a follow up report prepared by [REDACTED] in which [REDACTED] notes that based on the findings in her previous report and this report, the petitioner's depressive disorder and his anxiety symptoms are the direct result of the abuse he experienced in his relationship with M-M-. [REDACTED] also opines: the petitioner "stayed in a relationship with [M-M-] because despite the threats, the violence, the delusional behavior and the assaults to his self-esteem, he continued to believe in their love and the possibility that [M-M-] would change." [REDACTED] further opines: the petitioner was a "classic victim of emotional abuse." Counsel avers that the petitioner's mental disorder is directly related to the extreme abuse that he had received at the hands of his wife.

Counsel submits an additional statement signed by M-M-'s sister, in which she states that toward the end of the marriage, M-M- threatened the petitioner with being deported and that the petitioner told her that M-M- threw his clothes out the window, that M-M- hid his passport, and M-M- threatened the petitioner with violence from M-M-'s male friends. Dr. [REDACTED] also indicates that the petitioner, in a July 1, 2010 follow up interview, reported that M-M- brought her boyfriend to live in their apartment, told the petitioner that her boyfriend would shoot him if the petitioner did not give them money, threatened to call immigration to send him home, and gave his passport to her boyfriend.

Upon review of the record, the petitioner has not established that he was subjected to battery or extreme cruelty as defined in the statute and regulation. The petitioner does not claim and the record does not reveal that he was the victim of battery; rather the petitioner's claim is based on extreme cruelty. In that regard, the AAO acknowledges that the petitioner's depression occurred as a result of his failed marriage. The petitioner, however, does not provide a detailed statement that includes examples of instances of battery or extreme cruelty as set out in the statute and

regulation. The petitioner's wife's infidelity, bearing another man's child, and drug use do not constitute extreme cruelty under the statute and regulation. The petitioner has failed to provide specific testimony of the verbal abuse allegedly suffered or the threats of deportation. Thus, the record does not include testimony that demonstrates that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that M-M-'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 [REDACTED] July 1, 2010, follow up report and the petitioner's sister-in-law's statement submitted on appeal regarding threats of violence and deportation, we observe that the petitioner did not provide any information to United States Citizenship and Immigration Services (USCIS) regarding incidents of throwing his clothes out the window, hiding or giving his passport away, or threatening the petitioner with violence. The general reference to these incidents set forth by both the petitioner's sister-in-law and [REDACTED] for the first time on appeal without specific detail of the circumstances regarding the claimed incidents diminishes the probative value of the statements.

The petitioner's testimony provided to USCIS and to his doctors also lacks the requisite probative detail demonstrating that M-M-'s general threats constituted extreme cruelty under the statute and regulation. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents to result in such a conclusion. In this matter, the petitioner has failed to provide the necessary detail to establish M-M-'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 does the petitioner establish that M-M-'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)).

Similarly, the testimony of the declarants who submitted testimony on the petitioner's behalf does not provide probative details regarding specific incidents or events that they witnessed. For example, M-M-'s brother although noting that he witnessed "several accounts" of substance abuse, verbal abuse, and neglect, does not provide probative testimony regarding any event. Similarly, the statements of [REDACTED], and [REDACTED] make general references to the petitioner's marital problems but fail to provide probative detail of specific incidents of the claimed abuse. General references to verbal abuse, disrespect, as well as financial and emotional abuse are insufficient for a conclusion that the petitioner was subjected to extreme cruelty under the statute and regulation.

Upon review of the December 14, 2007 letter signed by [REDACTED] although noting his belief that the petitioner's problems started after his marriage in 2003, finds that the petitioner's severe mental and psychological trauma occurred after he discovered that his wife

had an affair and became pregnant by another man. Likewise, [REDACTED] in her first report indicated that the petitioner's Major Depressive Disorder resulted from the petitioner's feelings about his failed marriage. Infidelity and a failed marriage, as described in this matter, do not constitute extreme cruelty pursuant to the statute and regulation. Although [REDACTED] in her second report indicates that the petitioner's mental condition is the result of "abuse" and threats, violence, delusional behavior, and assaults on the petitioner's self-esteem and opines that the petitioner is a "classic victim of emotional abuse," she does not provide examples of the specific abuse that resulted in the petitioner's mental condition. There is insufficient information in her report to conclude that the general terms she uses to describe M-M-'s conduct constitutes extreme cruelty as defined in the statute and regulation. There are no specific incidents or events described in probative, credible detail that demonstrates M-M-'s conduct was used to exercise control over the petitioner or to ensure his compliance. Moreover, neither [REDACTED] provides their credentials or information regarding their training and professional experience for the record. Thus, their expertise in this matter has not been established.

Based upon a review of the totality of the evidence in the record, the petitioner has not established that he was subjected to battery or conduct that constitutes extreme cruelty as defined in the statute and regulation.

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.