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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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DATE: JUL 21 2011 OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: [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)

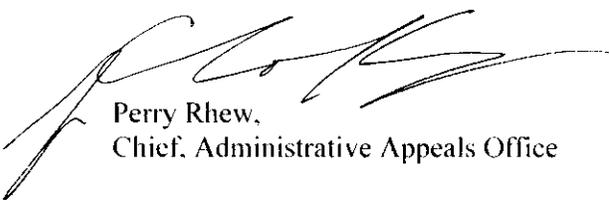
ON BEHALF OF PETITIONER:
[REDACTED]

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 service center director denied the immigrant visa petition and affirmed his denial in response to a subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 denied the petition on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief.

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Pakistan, married S-Y-¹ a citizen of the United States, on March 24, 1997. He filed the instant Form I-360 on October 27, 2008. The director issued two subsequent requests for additional evidence, to which the petitioner, through counsel, filed timely responses. After considering the evidence of record, including the petitioner's responses to his requests for additional evidence, the director denied the petition on August 31, 2010.

Counsel filed a motion to reopen and reconsider on October 1, 2010. The director granted the motion and, on December 15, 2010, affirmed his decision denying the petition. The petitioner filed the instant appeal on January 13, 2011.

¹ Name withheld to protect individual's identity.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

Battery or Extreme Cruelty

In his October 22, 2008 statement submitted at the time he filed the petition, the petitioner stated that S-Y- abused him; started fights with him; called him names; and threatened his immigration status. He claimed in his September 28, 2010 statement that S-Y- hit him on three occasions and threatened his immigration status.

██████████ and ██████████, whose September 28, 2009 letters were nearly identical to one another, stated that S-Y- abused drugs and alcohol; had extramarital affairs; abused the petitioner physically and verbally; and threatened his immigration status. ██████████ and ██████████ whose September 28, 2009 letters were also nearly identical to one another, made similar claims.

Dr. ██████████ stated in her September 28, 2009 letter that the petitioner suffers from major depressive disorder and severe psychosis related to his divorce proceedings and mental troubles.

Finally, the record contains an evaluation from Dr. ██████████ a social worker and former practicing psychotherapist who interviewed the petitioner on September 22, 2010. According to ██████████, the petitioner told him during their session that S-Y- used illicit substances; was unfaithful; pushed, shoved, and hit him; threw things at him; poured tea on him; threatened him; humiliated him in public; threatened his immigration status; stayed out late; isolated him; called him names; criticized his religious beliefs; and extorted money from him. ██████████ stated that the petitioner suffers from Posttraumatic Stress Disorder and chronic depression as a result of S-Y-'s mistreatment.

Upon review, the relevant evidence does not establish that S-Y- subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner's claim of battery is inconsistent. As noted, the petitioner made no claims of physical abuse in his October 22, 2008 statement. However, in his September 28, 2010 statement, he claimed that S-Y- hit him on three occasions. He then told ██████████ that S-Y- pushed and shoved him, hit him, threw things at him, and poured tea on him. The record therefore contains three distinct versions of the alleged physical abuse, and this inconsistency diminishes the probative value of the petitioner's testimony regarding the alleged battery. Nor is the testimony of the petitioner's affiants persuasive. The testimony of ██████████ ██████████ is general, and lacks probative details regarding specific incidents of abuse. Moreover, the statements of Mr. ██████████ and Mr. ██████████, as well as those of ██████████ and ██████████, are nearly identical to one another, which raises questions regarding their true authorship and diminishes their probative value. For all of these reasons, the petitioner has failed to demonstrate that he was battered by S-Y- during their marriage.

Nor does the relevant evidence establish that S-Y-'s behavior constituted extreme cruelty. To qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation

require that the non-physical cruelty be extreme. *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)). Even if the testimony of the petitioner and that of his affiants were not of limited probative value, it would still not establish that S-Y-'s alleged misconduct constituted extreme cruelty because it lacks probative, detailed information regarding specific incidents of such abuse.

Nor are counsel's assertions on appeal persuasive. Counsel states that the director erred in holding that S-Y- abused drugs, and claims that the petitioner suffered "mental torture and agony" as a result of her "violent behavior," not drug abuse. However, the record supports the director's determination as [REDACTED] all noted that S-Y- used controlled substances. Regardless of whether or not S-Y- abused drugs, the relevant evidence does not support counsel's claim that S-Y- engaged in "violent behavior" or otherwise subjected the petitioner to battery or extreme cruelty.

Counsel's assertion that [REDACTED] "have no reason to lie" does not address in any meaningful way the issue of why the statements of [REDACTED] and [REDACTED] and those of [REDACTED] and [REDACTED] are nearly identical to one another and lack any probative description of battery or extreme cruelty.

While we do not question the professional qualifications of either [REDACTED] their letters do not establish that S-Y- abused the petitioner during their marriage. [REDACTED] letter does not link any malady suffered by the petitioner to any abuse perpetrated by S-Y-, and [REDACTED] letter is based upon the testimony of the petitioner, whose testimony regarding the alleged abuse is of limited probative value.

The relevant evidence fails to demonstrate that S-Y- subjected the petitioner to battery or extreme cruelty during their marriage as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has failed to establish that S-Y- subjected him to battery or extreme cruelty during their marriage as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.