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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

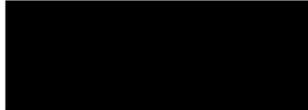


U.S. Citizenship
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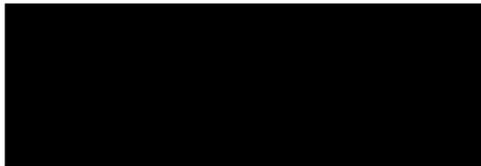
Date: Office: VERMONT SERVICE CENTER File: 

JUL 21 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:

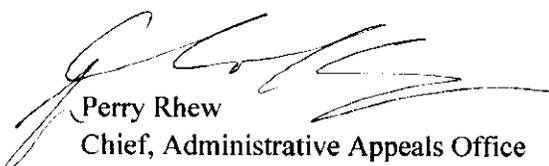


INSTRUCTIONS:

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 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, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s former wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a one-paragraph statement.

Relevant 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, 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 an abusive 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 further 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 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of the Dominican Republic who entered the United States on November 30, 2000 without inspection. The petitioner married a U.S. citizen on December 19, 2003 in New York City. On April 25, 2005, the petitioner filed an application to register permanent residence or adjust status (Form I-485) based on an underlying approved petition for alien relative (Form I-130) filed by his wife on his behalf. The applicant's adjustment application was denied after it was determined that he is inadmissible to the United States. On January 14, 2009, the petitioner and his wife divorced.

The petitioner filed the instant Form I-360 on November 13, 2009. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character, residence with his former wife, good-faith entry into the marriage and his former wife's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition for failure to establish that the

petitioner's former wife subjected him to battery or extreme cruelty during their marriage. Counsel filed a timely appeal.

On appeal, counsel submits a one-paragraph statement. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former wife did not subject him to battery or extreme cruelty. In his initial letter, the petitioner stated that in 2005 his former spouse started receiving treatment for infertility, and "sometimes [they] argued." The petitioner recalled that in the beginning of 2007 his former spouse "started having parties with her friends, going to dinner, to the night clubs and meetings with her boss." The petitioner noted that when he questioned his former spouse about her whereabouts she would call him names. The petitioner asserted that his former spouse would never tell him where she was going or when she would return home. He stated, "[w]hen she got very angry with me sometimes she pushed me." He recounted that if they argued at his grocery store his former spouse would push or yell at him in front of his customers. The petitioner noted that his brother and friends witnessed these actions. The petitioner asserted, "[s]he stopped helping me at the grocery store because she said to me that she was tired of me . . . she also stopped cooking me dinner and she changed a lot in the house, not cleaning very often like before, she did not want to have sex with me no more" He stated that his former spouse moved out of their home on August 31, 2007. The petitioner explained that he later learned that his former spouse was pregnant, and she did not know if the baby was his. The petitioner noted that after a DNA test, he learned that the baby was not his and he "suffer[ed] a lot because of this." In a subsequent affidavit, the petitioner reiterated his claims and stated that his former spouse "would throw things at [him] and push [him] against the wall." He noted that he discovered his former spouse "was having affair with her boss." Although the petitioner claims that his former wife pushed him and threw items at him, he has failed to describe in detail any specific incident of the alleged physical abuse. The petitioner's statements also do not indicate that his former wife's behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted a psychological evaluation, dated March 16, 2010, from [REDACTED]. The psychological evaluation was based upon a single meeting with the petitioner. In the report, [REDACTED] reiterated the difficulties the petitioner claims he suffered during his marriage. [REDACTED] opined her clinical impression of the petitioner was that he suffered from adjustment disorder with anxiety. Although the petitioner has been diagnosed with having an adjustment disorder, [REDACTED] noted in her report that the petitioner is now living with another woman and they have a ten-month-old child together. On appeal, counsel asserts that the petitioner "was so emotionally devastated that he had to seek counseling with a psychotherapist." However, the psychological report reflects that the petitioner had a single-session evaluation with [REDACTED] for the purpose of determining "the necessary interventions needed to improve his mental status." [REDACTED] recommended that the petitioner meet with a therapist "in order to help with coping skills and bolster the defenses." There is no indication in

the record that, other than his initial psychological evaluation, the petitioner has received any type of counseling.

The letters from the petitioner's friends do not provide any additional details to support his claim. ██████████ stated that the petitioner and his former spouse "have an [sic] serious incompatibility of character that have brooked [sic] this marital relation." ██████████ stated that she worked at the petitioner's grocery store and the petitioner's "marriage was working very well until the year 2007 when I could notice that they started arguing very constantly for anything." ██████████ stated, "I started noticing in the year of 2006 that they were having serious personal problem in their relation." ██████████ and ██████████ both stated that the petitioner and his former wife had "an incompatibility of characters." The petitioner's business accountant, ██████████, stated that he "observed verbal violence and difficult communication." On appeal, counsel asserts that the petitioner presented evidence that "his wife pushed him and insulted him in front of customers." However, none of the petitioner's friends, including his grocery store employee and business accountant, describe having knowledge of the events alleged by the petitioner. The petitioner's friends instead explain that the disintegration of the petitioner's marital relationship resulted from the mutual incompatibility of the petitioner and his former wife.

On appeal, counsel asserts that the petitioner's former wife "had an extramarital affair" and "made him believe that he was the father of her daughter until a DNA exam established that the [petitioner] was not the father." The record, however, shows that the petitioner knew that he was possibly not the father of his former wife's child. ██████████ reported that during the psychological evaluation the petitioner stated that his wife left him in August 2007, and on October 25, 2007, "he was . . . informed by the friend that she was pregnant and the child was from the boss." In his initial letter, the petitioner stated that after his wife left their home he learned from his wife's friend that she was pregnant and the child might not be his. Regardless of when the petitioner learned that he was not the father of his former wife's child, the relevant evidence does not show that his former wife's behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty.

In sum, the statements of the petitioner, his friends and ██████████ fail to provide probative accounts of any particular incidents of battery. The relevant evidence also lacks sufficient, detailed information to demonstrate that the petitioner's former wife's extramarital affair, abandonment and other behavior involved threats of injury to the petitioner, psychological abuse or sexual abuse, an overall pattern of violence or otherwise amounted to extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his former wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship

Beyond the director's decision, the petitioner has also failed to demonstrate a qualifying relationship with his former wife.¹ The record shows that the petitioner and his former wife were divorced in

¹ 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*

January 2009 before this petition was filed on November 13, 2009. As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's determination that he was not subjected battery or extreme cruelty. Beyond the director's decision, he has also not established that he had a qualifying relationship with his former wife. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.