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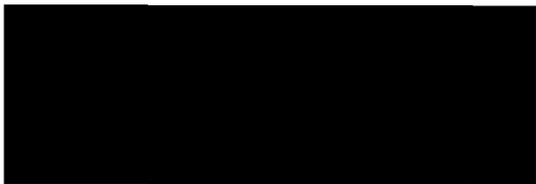
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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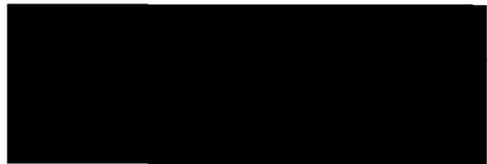
IN RE:

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 remains 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 subjected to battery or extreme cruelty perpetrated by the United States citizen spouse or that he had entered into the marriage in good faith. On appeal, counsel submits a Form I-290B, Notice of Appeal or Motion, 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.

* * *

(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.

Facts and Procedural History

The petitioner is a native and citizen of the Republic of Guyana. He entered the United States on October 17, 2002 on a B-2 visitor's visa with temporary authorization to remain in the United States until April 16, 2003. He married S-M-¹, the claimed abusive United States citizen [REDACTED]. On November 13, 2009, 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 S-M- from September 2008 to October 2009. On February 10, 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 S-M- or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, and additional documentation. Counsel later submits a Judgment of Divorce terminating the petitioner's marriage to S-M- that was filed on January 20, 2011 in the Queens County Clerk's Office in New York.

Battery and Extreme Cruelty

The petitioner initially did not submit any documentation in support of his claim that he had been subjected to battery or extreme cruelty. In response to the director's RFE, the petitioner submitted a May 3, 2010 statement in which he declared that "about two months after [he] moved in" the couple started having arguments. The petitioner noted that he is Hindu and that in March 2009, he and S-M- went to temple and she wanted to leave early and he did not, so she caused a big scene. The petitioner indicated that in another instance, he and S-M- went out to dinner with two of his friends and she drank too much and talked about how he did not make enough money. The petitioner noted at another time when he started to purchase a sweater for her, she shouted at him in the cashier's line that she did not like it and this occurred in front of other customers. The petitioner stated that S-M- began going out more and more with her girlfriends and he suspected she was using drugs and when he confronted her regarding her actions, she became verbally abusive calling him derogatory names. The petitioner also indicated that she spent money beyond his means. The petitioner stated further that once she petitioned for his immigration papers, she felt that she controlled his immigration status and threatened to cancel the papers.

The petitioner also provided an April 30, 2010 evaluation prepared by [REDACTED] based on two sessions of unspecified length on April 25 and April 27, 2010. [REDACTED] indicated that the petitioner reported that two months after the marriage, S-M- began to act in a coercive manner and her behavior became hostile and aggressive and by the third month of marriage she became verbally and emotionally abusive when he socialized with friends. [REDACTED] also indicated that the petitioner reported that when he confronted S-M- regarding financial irregularities in their joint account, his inquiries were met with escalating verbal and physical aggression that included throwing objects, pushing him, and yelling vulgarities, as well as threats to deport him. [REDACTED] further indicated that the petitioner

¹ Name withheld to protect the individual's identity.

reported that after the third month of marriage, S-M- would disappear for the day with no explanation and would withdraw money and would not follow up with important appointments. The petitioner also reported to [REDACTED] that in October 2009, S-M- took a weekend trip for her grandmother's funeral but when he asked about the details he was rebuffed and shortly after her return she removed all her possessions from the house and two bank accounts were almost completely emptied. [REDACTED] noted that the petitioner reported that S-M- threw objects and pushed him and that the petitioner provided examples of actions he perceived as abusive, including throwing small objects at him, humiliating and degrading him in public, yelling and screaming in public, and controlling his contact with friends and family. [REDACTED] noted that based on the petitioner's reports most of these actions occurred when S-M- had been drinking or when the petitioner inquired about the money withdrawn from their accounts. [REDACTED] opined: "[the petitioner] currently displays clinically significant emotional distress and symptoms of depression that is consistent with someone who has recently been a victim of traumatic experience involving abuse."

The petitioner also provided an April 23, 2010 affidavit signed by [REDACTED] who declared that in the spring of 2009, the petitioner and S-M- attended temple and she was shocked when she heard S-M- shouting at the petitioner that they must leave and when the petitioner refused to leave, S-M- stormed out. In an April 20, 2010 letter, [REDACTED] of the [REDACTED] indicated that members of the congregation had reported to him that S-M- argued with the petitioner when she wanted to leave the temple early. [REDACTED] noted that the petitioner later apologized regarding the disruption and that he offered the petitioner and his wife counseling.

Based on the information in the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty as defined in the statute and regulation.

On appeal, counsel asserts that the director looked at each instance of reported abuse in isolation rather than evaluating the totality of the evidence and the effects of the abuse on the petitioner. Counsel notes that experts have agreed that acts of isolation, public humiliation, and control are indicative of abusive behavior and extreme cruelty. Counsel submits the petitioner's judgment of divorce terminating his marriage to S-M- based on the ground of cruel and inhuman treatment.

Counsel also submits the petitioner's second affidavit in which the petitioner indicates that he found it difficult to articulate the things that he endured because he is ashamed and embarrassed. The petitioner declares that S-M- did not batter him severely but that she did push and shove him and "[w]hat was more horrible to [him] was the public embarrassment." The petitioner indicates that what he went through with S-M- was extremely frightening and he felt trapped and everyday became increasingly trying until he could not take it and ended the marriage.

Counsel also submits an October 12, 2010 affidavit from the petitioner's friend, [REDACTED] declares that once when he met the petitioner and S-M- for lunch he noticed that S-M- seemed unwell and agitated and she started screaming and yelling at the petitioner in public and when he drove them home as the petitioner started to exit the car, S-M- pushed/shoved him out.

██████████ also declares that he noticed that their apartment had a lot of beer bottles and cigarettes and the petitioner told him it was from S-M-'s friends and that he had to clean the apartment because S-M- would not do it. ██████████ references another time when he took the petitioner and S-M- out for dinner and he thought he saw needle marks on S-M-'s arm and he asked how they were doing and the petitioner said that S-M- had been acting strangely and S-M- got up and started cursing and grabbed one of the glasses on the table but he grabbed it from her before she could hit the petitioner. ██████████ also relates additional incidents that the petitioner told him about but that he did not witness. The record on appeal also includes an April 22, 2010 affidavit signed by ██████████, who declares that on one occasion while she was visiting, the petitioner wanted to go out with a friend and S-M- objected loudly and it was very embarrassing and demeaning to the petitioner. ██████████ also declares that she went with the couple to a store and the couple argued and the petitioner wanted to discuss the problem at home but S-M- was irrational in public.

Upon review of the record, the petitioner initially provided no information regarding his claim that he had been subjected to battery or extreme cruelty and in response to the director's RFE did not provide information in his personal statement regarding any incident of battery. Although the petitioner referenced being pushed and shoved and having objects thrown in his direction to ██████████ report does not include descriptions of any particular incident in detail. The report fails to provide any of the surrounding circumstances or details regarding the petitioner's allegations. The petitioner does not provide a consistent chronological timeline of any events and does not describe in detail the interactions of the couple leading up to, during, or after the alleged incidences of battery. On appeal, the petitioner declares that S-M- did push and shove him and ██████████ notes that S-M- pushed the petitioner when he was trying to get out of the car. The descriptions again lack the requisite detail of the event and surrounding circumstances to conclude that S-M-'s conduct constituted battery.

The petitioner indicates that "[w]hat was more horrible to [him than pushing and shoving] was the public embarrassment." The record includes several incidents related by the petitioner and his friends describing S-M-'s yelling, cursing, and calling the petitioner derogatory names in public or in front of friends. The incidents as described do not include information that suggests that S-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. Although ██████████ reports that the petitioner picked up a glass to throw at the petitioner in a restaurant and the petitioner reported that S-M- threw objects at him, the record does not include evidence or testimony that S-M-'s actions were attempts to harm or control the petitioner. The petitioner's affidavit in response to the director's RFE indicates his embarrassment at the actions of his wife and he confirms on appeal that the public embarrassment was the most horrible part of his relationship with S-M-. Embarrassment as described, however, is insufficient to establish that S-M-'s conduct constituted extreme cruelty as set out in the statute and regulation. In this matter, the petitioner's testimony and the testimony of his friends fail to establish that the actions of S-M- 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 has the petitioner established that S-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)).

Upon review of the evaluation prepared by [REDACTED] the events related to [REDACTED] likewise fail to provide sufficient information to conclude that S-M-’s actions constituted battery or extreme cruelty under the statute and regulation. The AAO also observes that the petitioner was interviewed by [REDACTED] on only two occasions and thus his report lacks the insight commensurate with an established relationship with a patient. [REDACTED] found that the petitioner’s symptoms of depression is consistent with someone who had recently been a victim of a traumatic experience involving abuse, however, [REDACTED] does not provide a definitive opinion that connects the petitioner’s symptoms to any specific incident or event of battery or extreme cruelty as those terms are defined in the statute and regulation.

Upon review of the petitioner’s final judgment of divorce, although the divorce was granted based upon cruel and inhuman treatment, the court’s conclusion is of little probative value in this matter. The divorce judgment indicates that S-M- waived her right to answer and thus, the divorce was granted without review of the circumstances of the “cruel and inhuman treatment.” Furthermore, the petitioner has not presented any evidence that the term “cruel and inhuman treatment” as cited in the judgment of divorce is equivalent to the definition of battery or extreme cruelty as set out in the regulation at 8 C.F.R § 204.2(c)(1)(vi).

The petitioner has failed to provide any detailed probative testimony regarding controlling or manipulative behavior perpetrated by S-M-. The petitioner has failed to provide probative evidence that S-M-’s conduct constituted extreme cruelty as set out in the statute and regulation. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty under the statute or regulation. The petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by S-M-.

Good Faith Entry Into Marriage

The petitioner initially did not provide any information in support of the good faith marriage requirement. In response to the director’s RFE, the petitioner provided an overview of his initial meeting and subsequent interactions with S-M- prior to marriage. He stated for example, that S-M- “was fun to be with” and that “she like[d] to have a good time.” The majority of his personal statement related to the claimed abuse.

The petitioner also provided an April 20, 2010 affidavit signed by [REDACTED] who indicated that she had met S-M- with the petitioner several times at the petitioner’s home. [REDACTED] the temple priest, in an April 20, 2010 letter indicated that he had met S-M- once and that the petitioner had brought S-M- to the temple for a temple festival.

The record included a 2008 Internal Revenue Service (IRS) Form 1040 showing the couple filed taxes as married filing jointly. A certified copy of the tax return is provided on appeal. The record also included a bank statement issued by Bank of America covering the limited time period between October 1, 2009 to October 9, 2009 and a bank statement for the period January 22 to March 17, 2010 issued by Citibank showing a joint account for the couple; although the couple separated in October 2009. Neither bank statement includes probative information regarding the underlying transactions. The record further included several envelopes and miscellaneous mail addressed to both the petitioner and S-M- or to each individual showing a common address. The record also contained photocopies of identification documents and of credit cards and telephone bill statements. The record further contained photographs of the couple at their wedding and on one or two other occasions.

Based on the information in the record, the director determined that the petitioner had not established his good faith intent when entering into the marriage.

On appeal, counsel asserts that the director erred when determining that the petitioner had not entered into the marriage in good faith. In addition to providing the certified 2008 tax return, counsel also provided the petitioner's second affidavit. The petitioner states that his father made the trip from Guyana to attend his wedding and that his father would not have condoned the marriage if he had not been serious about the relationship. The petitioner asserts that if the documentary evidence submitted is considered in the aggregate, the documents show that the couple lived together. He states that he did not marry S-M- for immigration status.

In the affidavit of [REDACTED] submitted on appeal, [REDACTED] indicates that he was with the petitioner when he met S-M-, that he knew that the petitioner was seeing S-M-, and that the petitioner called and told him when he proposed to S-M-. He also indicated that he drove the couple to the marriage ceremony and to witness them getting married and attended the subsequent dinner at an Indian restaurant and the petitioner's home. [REDACTED] indicated in her affidavit submitted on appeal that she met S-M- prior to the marriage and was unable to attend the wedding ceremony.

Upon review, the petitioner does not provide probative testimony regarding his courtship with S-M- or his interactions with S-M- in detail. He does not describe the couple's mutual interests in detail, he does not describe her family in detail, he does not detail the couple's daily routines, and he fails to provide any probative information for the record that assists in determining his intent when 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). Simply stating that he married S-M- for love is insufficient to establish his good faith intent in entering into the marriage. Similarly, the statements from his friends fail to provide any probative details regarding their observations of the petitioner's interactions with S-M-, other than interactions relating to the claimed abuse.

The documentary evidence submitted is insufficient to establish the petitioner's intent when entering into the marriage. As the director observed, a joint bank account without evidence of the underlying transactions does not establish that the couple commingled assets and had established a life together. The photographs show that the couple engaged in a marriage ceremony and were together on a few occasions but do not establish the petitioner's intent when entering into the marriage. Upon review of the totality of the record and considering the documentary evidence in the aggregate, the documentation is insufficient to establish the petitioner's intent when entering into the marriage. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimony and the testimony of others on his behalf also fails to demonstrate or otherwise assist in establishing his intent when entering into the marriage. The record in this matter does not include sufficient probative evidence, even when considering the information in the aggregate, to establish that the petitioner entered into marriage with S-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

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.