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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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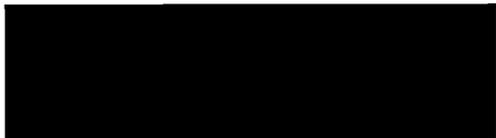
DATE: JUN 08 2011 OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE: 

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:

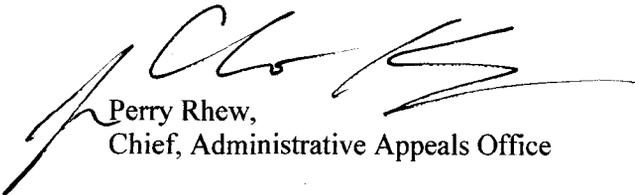


INSTRUCTIONS:

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 service center 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 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 citizen of the United States.

The director determined that the petitioner did not establish that his wife subjected him to battery or extreme cruelty during their marriage, and denied the petition accordingly. On appeal, the petitioner contends through counsel that the director erred in denying his petition, and he submits an additional personal statement. See *Letter Brief in Support of Appeal*, dated Sept. 20, 2010; *Signed Personal Statement*, dated Aug. 21, 2010.

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).

An alien who has divorced a United States citizen may self-petition under this provision 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, 8 U.S.C. § 1154(a)(1)(J) 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 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 filed 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 record reflects that the petitioner is a native and citizen of the United Kingdom who was admitted to the United States as a visitor on [REDACTED] 2003. The petitioner married S-O-¹, a citizen of the United States, on [REDACTED], 2005. On [REDACTED] 2006, S-O- filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf, and the petitioner concurrently filed an Application to Adjust Status (Form I-485). On October 11, 2007, U.S. Citizenship and Immigration Services (USCIS) revoked the approval of the relative visa petition and denied the related adjustment of status application. The couple divorced on [REDACTED] 2007.

¹ Name withheld to protect the individual's identity.

The petitioner filed the instant Form I-360 on April 30, 2008. On July 14, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner submitted a response to the RFE. The director denied the petition on July 22, 2010, and the petitioner timely appealed.

Analysis

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, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Beyond the decision of the director, the petitioner also has not demonstrated a qualifying relationship with his former wife.

Battery or Extreme Cruelty

In support of his claims of abuse, the petitioner submitted several personal statements, a psychological report, a police report, and statements from his sister and several friends.

In his personal statement dated April 11, 2008 (which was resubmitted and dated August 21, 2010), the petitioner stated that S-O- refused to allow him to speak with her father, she always objected to his suggestions for social outings, and she never appreciated the gifts he bought for her. Additionally, the petitioner stated that he was "really upset" and "down for a couple of days" when S-O- told him that she did not want to have children and that she would have an abortion if she got pregnant. In an undated statement submitted in response to the RFE, the petitioner stated that S-O- communicated with her ex-boyfriend during their marriage, and that she later married him. The petitioner also stated that S-O- chided him for his lack of education and poor grammar, and she told him that he was not a real man. The petitioner reiterated the pain he felt when S-O- told him that she would have an abortion if she got pregnant, and he stated that he felt "used" by his former spouse. In the August 21, 2010 personal statement submitted on appeal, the petitioner claims that S-O- subjected him to verbal abuse, financial abuse, possessiveness, social isolation, and a poor quality of life.

The petitioner submitted a copy of a psychological report prepared by a licensed clinical psychologist based on a December 20, 2007 evaluation. The report states that the petitioner discussed his former wife's: negative and belittling statements, racial slurs, disinterest in starting a family, bragging about dating other men, and excessive spending. The petitioner also reported to the psychologist that S-O- "physically attacked and 'beat up' on him" in April, 2006, but the psychologist's evaluation includes no further description of this incident. The psychologist diagnosed the petitioner with insomnia and "moderately severe adjustment reaction with strong features of major depression and anxiety" related to "domestic abuse, divorce, severe occupational & financial stress."

On October 16, 2007, the petitioner filed a police report with [REDACTED] Department regarding the April, 2006 incident. The police report indicates:

R/O was dispatched to DGPD for a harassment call. Upon arrival R/O spoke with [REDACTED] who advised that in April of 2006 he was scratched and hit by his wife, [S-O-]. [REDACTED] advised that he is involved in a divorce with [S-O-] and that his attorney requested a report be taken.

[REDACTED] advised that both he and his wife were seeing other persons in April of 2006. On one day that month at approximately 0100 hrs he was awoken by his wife who was hitting him in the face. [REDACTED] advised that he did not report the incident at the time since he did not feel that it was proper for a husband to do that.

[REDACTED] advised that he did not have any proof of the incident. R/O was unable to contact [S-O-] at this time because [REDACTED] could not provide a phone number for her.

Nothing further.

On November 5, 2007, the petitioner filed a supplemental police report stating that:

when he told R/O that his wife and he were "doing their own thing" that he did not mean that he was dating other women. [REDACTED] advised that what he meant by that statement was that they were each going out after work independently of one another. [REDACTED] further advised that he did believe his wife was having an affair with another man.

The petitioner's sister, who lives in the United Kingdom, said in an undated statement that S-O- confided in her that she remained in contact with her former boyfriend during the marriage, and that "she knows she hasn't been the best wife" for the petitioner. The petitioner's sister stated her belief that S-O- "battered [her] brother brutally in all possible ways," but she does not discuss any particular incident of physical abuse. The petitioner also submitted several statements from friends discussing the quality of his relationship with his former wife. [REDACTED] recounted in a January 12, 2008 statement that he was present at a social gathering when S-O- cursed at and insulted the petitioner in front of everyone. [REDACTED] said in a statement dated January 10, 2008, that he "witnessed [S-O-] physically harassing [REDACTED] by holding and squeezing his shirt." [REDACTED] recounted in an undated statement that "[o]n several occasions, [S-O-] has repeatedly curse [REDACTED] in front of [his] family." [REDACTED] indicated in an undated statement that she heard S-O- call the petitioner "a [p]athetic lo[ser]." [REDACTED] both briefly state that the petitioner told them his wife assaulted him while he was asleep, but they did not provide any further, probative information regarding these incidents.

The relevant evidence fails to demonstrate that the petitioner's former wife subjected him to battery or extreme cruelty during their marriage. First, the petitioner's claims that his former wife insulted him, did not want to have children with him, was unfaithful, and misused the family's finances do not establish that her actions amounted to psychological abuse, were part of a pattern of violence, or that

she otherwise subjected the petitioner to extreme cruelty, as that term is defined by the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Second, the evidence regarding the petitioner's single claim of physical abuse is vague and equivocal. Specifically, the petitioner's description of the incident lacks probative detail regarding the circumstances surrounding the incident. Additionally, the petitioner's police reports contain inconsistent information regarding the event. In the first report, the petitioner appeared to imply that the incident was related to the fact that "both he and his wife were seeing other persons." In the supplemental police report, the petitioner states that he did not mean that he was dating other women. Further, the petitioner did not report the April, 2006 incident in his initial personal statement in support of this petition. Finally, the petitioner stated that he made the report based on advice from his attorney a year and a half after the incident occurred.

Third, the statements from the petitioner's sister and friends also do not support a finding of battery or extreme cruelty. The allegations of insults and infidelity are insufficient to establish extreme cruelty and the brief references to assault lack probative detail sufficient to demonstrate battery.

Finally, the psychological evaluation shows that the petitioner has suffered from insomnia, depression and anxiety related, in part, to his troubled relationship with his former wife. While we do not question the expertise or diagnosis of the clinical psychologist, the evaluation alone does not indicate that the behavior of the petitioner's former wife involved battery or extreme cruelty.

Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Beyond the director's decision, the petitioner has also failed to demonstrate that he had a qualifying relationship with his former wife and was eligible for immediate relative classification based on their relationship. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act permits a divorced alien to self-petition based on the former marriage only 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" As the petitioner has failed to demonstrate that his former spouse subjected him to battery or extreme cruelty, he has also not demonstrated any connection between his divorce and such abuse. Consequently, the petitioner did not have a qualifying relationship with his former spouse, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act, and is ineligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's determination that his former wife did not subject him to battery or extreme cruelty during their marriage. Beyond the director's decision, the petitioner has also failed to establish a qualifying spousal relationship with a U.S. citizen and his

eligibility for immediate relative classification based on such a relationship.² He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, and his petition must remain denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

² 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).