

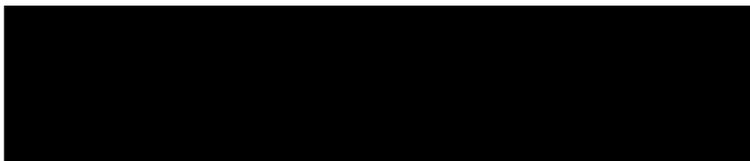
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

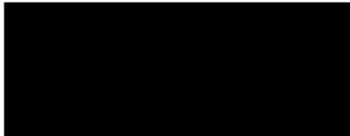


U.S. Citizenship
and Immigration
Services



B9

DATE: JUN 17 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)

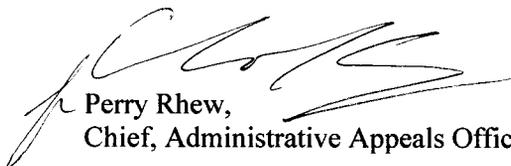
ON BEHALF OF PETITIONER:


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 Administrative Appeals Office (AAO) remanded a subsequent appeal for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed.

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.

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.

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 director denied the petition on August 28, 2007 on the basis of his determination that the petitioner had failed to demonstrate that his wife subjected him to battery or extreme cruelty during their marriage. The petitioner appealed the director's decision to the AAO and, in our April 20, 2009 decision, we agreed with the director's decision but nonetheless remanded the petition to the director on technical grounds for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).¹

The director issued the requisite NOID on May 7, 2010, and counsel submitted a letter from Grupo Sur of Nevada in response. The director found this letter insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage, and he denied the petition on that ground on February 3, 2011. The director notified the petitioner that his decision

¹ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (April 17, 2007). The rule became effective on June 18, 2007, after the filing of this petition on October 5, 2006.

would be certified to the AAO for review and that he had 30 days during which to submit a brief or other written statement to be considered during our review. As no further documentation has been received from counsel or the petitioner, we deem the record complete as it now stands.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the petitioner has failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. We agreed with the analysis of the director's earlier decision in our April 20, 2009 decision, and the contents of our prior decision, as well as the evidence of record upon which we based that decision, are part of the record and their contents need not be repeated in full.

Battery or Extreme Cruelty

In finding the testimonial evidence of record insufficient to support a finding that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage in our April 20, 2009 decision, we noted several inconsistencies in the petitioner's accounts of the alleged abuse, and found that those inconsistencies diminished the probative value of his testimony regarding the alleged abuse. We also found that his wife's non-physical actions as described by the petitioner were not comparable to the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty.

In response to the director's NOID, counsel submitted a June 2, 2010 letter from [REDACTED] of the [REDACTED]. According to [REDACTED] the petitioner approached "[their] group" in order to recover and achieve emotional stability. He stated that the petitioner's wife threatened his immigration status and subjected him to "emotional terrorism," which included threats of depriving him access to their son. [REDACTED] also stated that the abuse to which the petitioner was subjected left him with "deep sentimental wounds."

[REDACTED] ten-sentence letter does not cure any of the deficiencies cited in our prior decision. First, the roles of [REDACTED] and [REDACTED] are not clear. [REDACTED] does not discuss or present any evidence regarding his professional qualifications to opine on the petitioner's emotional state, nor was any information regarding "[their] group" or the [REDACTED] provided. Nor are any specific incidents of abuse or extreme cruelty discussed in any probative detail. Nor does his letter resolve, or even address, the inconsistencies identified in our prior decision.

Upon review, we affirm the director's decision. The new evidence of record fails to overcome the previous decisions of the director and the AAO. The petitioner has failed to demonstrate that his 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.

Conclusion

The petitioner has failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and his 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 and the director's decision denying the petition is affirmed.

ORDER: The director's February 3, 2011 decision is affirmed. The petition remains denied.