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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 21 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 failed to establish that he had a qualifying relationship with his first wife, that he was eligible for immediate relative classification based on that relationship, or that his second wife subjected him to battery or extreme cruelty during their marriage. The petition was denied accordingly. On appeal, the petitioner contends through counsel that the director erred in denying his petition, and he submits an additional psychological report.

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 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, 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.

* * *

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Pertinent Facts and Procedural History

The record reflects that the petitioner is a native and citizen of Nigeria who was admitted to the United States as a visitor on June 7, 2003. The petitioner married E-B-,¹ a citizen of the United States, on November 13, 2003. The couple divorced on January 27, 2005. The petitioner married

¹ Name withheld to protect the individual's identity.

N-P-², a citizen of the United States, on May 24, 2005. On July 7, 2005, N-P- filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf. On May 11, 2009, U.S. Citizenship and Immigration Services (USCIS) denied the relative visa petition based on a finding that the petitioner participated in a fraudulent marriage to his first wife, E-B-. The petitioner and N-P- divorced on March 30, 2010.

On January 4, 2010, prior to the divorce, the petitioner filed the instant Form I-360. On March 19, 2010, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty, and the petitioner's marital history and current status. The petitioner, through counsel, submitted a response to the RFE. The director denied the petition on September 21, 2010, and the petitioner timely appealed. A Notice to Appear for removal proceedings was served on the petitioner on February 8, 2011, and the petitioner's next hearing is on June 29, 2011.

Analysis

Battery or Extreme Cruelty

In support of this petition, the petitioner submitted documentation stating that he was abused by his first wife, E-B-. For instance, licensed clinical social worker [REDACTED] prepared a mental health report, dated December 21, 2009, which stated that the petitioner "certainly does appear to have been emotionally, physically, financially, and sexually abused by his former wife, [E-B-]." Although the report mentions that the petitioner was verbally abused by his second wife, N-P-, the bulk of the report discusses the petitioner's report of abuse by E-B-.

A November 30, 2009 letter from [REDACTED] at the at the [REDACTED] [REDACTED] states that the petitioner "came to [REDACTED] September 22, 2009 as a result of the emotional, economic, physical, and verbal abuse he suffered while married to Ms. [E-B-]." The letter does not discuss any claims of abuse by N-P-.

The petitioner also submitted a number of general letters and statements from family and friends indicating that the petitioner was abused by his first wife, E-B-. The petitioner's cousin and roommate [REDACTED] and his niece [REDACTED] stated generally that the petitioner was abused by E-B-. The statements do not refer to the petitioner's marriage to N-P-. Friends [REDACTED] and [REDACTED] also referenced abuse by E-B-, and contain no mention of the petitioner's second marriage. The letters from [REDACTED] and [REDACTED] also do not reference any claims of battery or extreme cruelty by N-P-.

² Name withheld to protect the individual's identity.

The director's RFE informed the petitioner that any evidence of abuse committed by E-B- cannot be considered in this petition. In response to the RFE, the petitioner submitted documentation claiming abuse by N-P-.

In his undated personal statement, the petitioner claimed that N-P- engaged in verbal abuse, including threats to have him deported. He also claimed that N-P- was a drug addict, she tried to force him to use drugs, she demanded his money, she never let him drive his own car, and she wrecked his car in 2006. The petitioner also stated that N-P- would slap him on the face, push him around, and throw objects at him.

In an updated mental health report by [REDACTED], dated May 20, 2010, the petitioner claimed that N-P- became abusive after she learned during an immigration interview that his first wife abused him. The petitioner stated that N-P- insulted and berated him, threatened to have him deported, threw things at him, and pushed him. He also stated that N-P- took his car keys, wrecked and abandoned his vehicle, expected him to pay for everything, abused drugs, and accused him of having extra-marital affairs.

In a second letter on [REDACTED] letterhead, dated May 28, 2010, the writer stated, in contrast to the first HAWC letter, that the petitioner "came to [REDACTED] September 22, 2009 as a result of the emotional, economic, physical, and verbal abuse he suffered while married to Ms. [N-P-]." The letter includes several allegations of abuse committed by N-P-.

In a letter from [REDACTED] dated June 1, 2010, the writer referred to N-P- as "brash" and noted her "wicked antics" and "abuses and denigration." In a letter from [REDACTED] dated June 1, 2010, the writer referred generally to mental, verbal, economic and physical abuse by N-P-.

The petitioner also submitted a copy of the couple's March 30, 2010 divorce decree, which notes that N-P- "is guilty of cruel and physical treatment toward [the p]etitioner of a nature that renders further living together insupportable."

On appeal, the petitioner submitted a psychological assessment prepared by clinical mental health consultant [REDACTED] based on three interviews conducted in October, 2010. When relating his current situation, the petitioner stated that N-P- insulted him, threatened to have him deported, slapped and pushed him, threw things at him, and injured his genitals. He also stated that N-P- was a drug addict who demanded money, and that she would not let him use his own car, which she ultimately destroyed. The petitioner described his emotional state as depressed, and he reported sleep difficulties, problems in sexual functioning, body pains, and anxiety. The report stated that the petitioner's self-report suggested possibilities of attention/concentration difficulties, hallucinatory experiences, delusional thinking, and unusual thought content.

The relevant evidence fails to demonstrate that the petitioner established the requisite battery or extreme cruelty. First, the petitioner's allegations of abuse by his first wife, E-B-, cannot support his petition under section 204(a)(1)(A)(iii) of the Act because the petitioner married N-P- before the

petition was filed. *See* 8 C.F.R. § 204.2(c)(1)(ii) (stating that a self-petitioner's remarriage will be a basis for the denial of a pending petition).³

Second, the petitioner's claims that N-P- insulted and berated him, threatened to have him deported, demanded money, abused drugs, took his car keys, wrecked his car, and accused him of having extra-marital affairs, 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).

Third, the evidence regarding the petitioner's claims of physical abuse is vague, equivocal, and inconsistent. Specifically, the petitioner stated that N-P- would slap him on the face, push him around, and throw objects at him. However, the petitioner does not describe any specific incidents or the surrounding circumstances, and the claims lack probative detail sufficient to demonstrate battery. Similarly, the claims reported in the updated mental health report lack specific and probative detail. Although the petitioner has raised a new claim that N-P- abused his genitals on appeal, he has provided no explanation for his failure to discuss this claim in any of the previous mental health reports or in other documentation.

Fourth, the [REDACTED] letters are entitled to little evidentiary weight given the contradictions between the two letters, the lack of probative detail, and the substantially similar language and allegations of abuse. Specifically, the first letter indicated that the petitioner sought domestic violence services on September 22, 2009, because of the abuse he suffered from his first wife. The letter did not mention any abuse performed by N-P-. The second letter stated that the petitioner sought domestic violence services on September 22, 2009, because of abuse caused by his second wife, N-P-. No mention was made of previous abuse by E-B-, and no effort was made to explain this contradiction. Further, the allegations of abuse are lacking in probative detail, and the statements of abuse contain numerous identically-worded phrases.

Fifth, the brief letters from [REDACTED] and [REDACTED] do not describe any specific instances of abuse. Accordingly, these letters do not provide probative evidence in support of the petition.

Sixth, the language in the petitioner's divorce decree, which notes that N-P- "is guilty of cruel and physical treatment" is insufficient to support a finding that the petitioner was subjected to battery or extreme cruelty by N-P-, as that term is defined by the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Finally, the psychological evaluation submitted on appeal repeats the petitioner's general allegations, and indicates that the evidence suggests possibilities of attention/concentration difficulties, hallucinatory experiences, delusional thinking, and unusual thought content. However, the report does not indicate that the behavior of N-P- caused these possible conditions, or that her

³ The director correctly determined that inasmuch as the petitioner claimed that his first wife, E-B-, abused him, he was ineligible for immigrant classification based on their relationship because they had divorced and he had married his second wife, N-P- at the time this petition was filed.

actions 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.

Conclusion

On appeal, the petitioner has not overcome the director's determinations that: 1) he is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act based on his relationship with his first wife; and 2) that his second wife did not subject him to battery or extreme cruelty during their marriage. 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.