

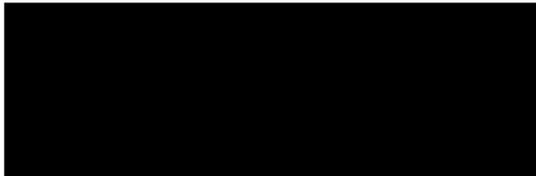
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

Date:

Office: VERMONT SERVICE CENTER

FILE: 

JUN 22 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:

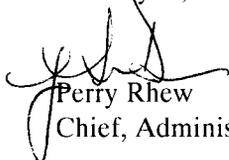


INSTRUCTIONS:

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 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 certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed and the petition will remain denied.

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 a United States citizen.

The director denied the petition for failure to establish the requisite abuse. On appeal, counsel submits a memorandum.

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, 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, 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 clause (ii) or (iii) of subparagraph (B), 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 or the self-petitioner's child, 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 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.

The petitioner is a citizen of Kenya who entered the United States as a student in 2004. On December 29, 2005, the petitioner married a U.S. citizen in New York. The petitioner's wife filed an alien relative immigrant petition on the petitioner's behalf, which was denied on November 26, 2007. The petitioner filed the first Form I-360 self-petition on May 4, 2007, which was denied on July 25, 2008, for failure to establish the requisite abuse. The petitioner filed the second Form I-360 self-petition on August 26, 2008, which was denied on February 24, 2010, for failure to establish the requisite abuse.

The petitioner filed the instant (third) petition on April 6, 2010. The director subsequently issued a Notice of Intent to Deny (NOID), requesting a clarification as to whether the petitioner was still married to his U.S. citizen wife and evidence that his U.S. citizen wife subjected him to battery or extreme cruelty. The petitioner, through counsel, submitted additional evidence. The director found the additional evidence insufficient and denied the petition for failure to establish the requisite abuse.

On certification, counsel cites to court cases to state that any inconsistencies in the petitioner's testimony should be considered within the context of his entire case. Counsel concludes that a review of the petitioner's case in its entirety finds that he was subjected to battery and extreme cruelty by his wife.

In his response to the director's NOID, counsel submitted an affidavit dated September 29, 2010, from the petitioner and a psychosocial report dated September 22, 2010, from [REDACTED]

In his September 29, 2010 affidavit submitted in response to the director's NOID, the petitioner stated, in part, that: his wife attended the immigration interview high on drugs, which was the height of extreme cruelty; his wife's own father recognized that she had serious flaws; his wife caused him significant stress, financial problems, and humiliation; his wife was dysfunctional and stole from her own cousin; the opinion of [REDACTED] should be respected, regardless of when he went to see her; the financial debt incurred by his wife created a liability for him; his wife abused him economically; he did not fund their joint accounts because she would have depleted them; and he was seriously victimized by his wife.

In his psychosocial report dated September 22, 2010, submitted in response to the director's NOID, [REDACTED] stated, in part, that he based his report on one interview with the petitioner on September 21, 2010. [REDACTED] discussed the petitioner's background, namely that he was born in Kenya and entered the United States on a valid visa with plans to study at a U.S. university, though his plans did not work out. [REDACTED] also reiterated and expanded on the petitioner's testimony, and discussed behavior by the petitioner's wife that the petitioner himself did not mention or was inconsistent with the petitioner's prior testimony. For example, the petitioner reported that his wife pushed, shoved, and hit him in public and also pushed and shoved him whenever he did not comply with her demands for money. [REDACTED] concluded that the petitioner suffered from Posttraumatic Stress Disorder [PTSD] and Major Depressive Disorder as a result of physical, sexual, emotional, verbal, and financial abuse.

Upon review, we concur with the director's determination. As stated by the director in his decision, the additional evidence submitted in response to the NOID does not overcome the grounds for denial or resolve the inconsistencies and/or deficiencies in the record. In this matter, [REDACTED] diagnosed the petitioner with "Partner Relational Problem" in her April 15, 2008 psychological evaluation, which was submitted as supporting documentation for the instant petition and the petitioner's second I-360 petition. As stated by the director, [REDACTED] evaluation did not indicate that the petitioner was subjected to battery and/or extreme cruelty by his wife. While the petitioner indicated in his October 23, 2009 affidavit that he feared for his life because his wife threatened him with a knife and told him that she was a gang member, he did not mention this information to [REDACTED] during the psychological assessment on March 20, 2008. Nor did he mention this information in his previous affidavits dated April 20, 2007, March 31, 2008, August 20, 2008, and October 8, 2008, respectively, or in his subsequent affidavits dated March 25, 2010 and September 29, 2010, respectively. The petitioner specifically stated in his most recent affidavit submitted in response to the NOID, "Mine is a case of economic abuse." As stated by the director in his decision, the psychological evaluations from [REDACTED] and [REDACTED] contain inconsistent information reported by the petitioner and inconsistent diagnoses. The AAO agrees that the petitioner's escalation, in his October 23, 2009 affidavit and in his testimony to [REDACTED] of the type and seriousness of the abuse amounts to inconsistent testimony on the part of the

petitioner which undermines the credibility of his testimony and the testimony of [REDACTED]. It is also noted that the record contains additional inconsistencies. For example, [REDACTED] stated that the petitioner reported that his wife left him abruptly and went to live with her grandmother after he asked her questions about her child's father, which conflicts with the petitioner's April 20, 2007 testimony, in which he stated that he asked his wife to pack her bags and leave immediately after she laughed at and insulted him subsequent to their immigration interview. Again, the evidence submitted in response to the NOID, constituting additional testimony from the petitioner and the psychosocial report dated September 22, 201, from [REDACTED] fails to establish the requisite abuse. As explained above, the record contains insufficient evidence and unresolved inconsistencies and/or deficiencies pertaining to the petitioner's claimed abuse from his wife. Upon review, we concur with the director's determination, and consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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. Here, that burden has not been met. Accordingly, the February 3, 2011 decision of the director is affirmed and the petition remains denied.

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