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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**

[REDACTED]

Bq

DATE: JUN 22 2011 OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: [REDACTED]

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:

SELF-REPRESENTED

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 affirmed his denial in response to a subsequent motion to reconsider. 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 United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that his former wife subjected him to battery or extreme cruelty during their marriage. On appeal, the petitioner submits a brief.

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).

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 petitioner, a citizen of Pakistan, married L-A,¹ a citizen of the United States, on April 19, 2000. He filed the instant Form I-360 on November 13, 2009. The director issued two subsequent requests for additional evidence, to which the petitioner filed timely responses. After considering the evidence of record, including the petitioner's responses to his requests for additional evidence, the director denied the petition on September 28, 2010.

The petitioner filed a motion to reconsider on October 13, 2010. The director granted the motion and, on January 7, 2011, affirmed his decision denying the petition. The petitioner filed the instant appeal on February 1, 2011.

¹ Name withheld to protect individual's identity.

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, we find that the petitioner has failed to overcome the director's ground for denying this petition.

Evidentiary Standard and Burden of Proof

On appeal, the petitioner argues that the director incorrectly applied the "any credible evidence" standard. However, the petitioner has conflated the evidentiary standard set forth by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. Section 204(a)(1)(J) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." *Id.* This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for establishing the petitioner's claim list examples of the types of documents that may be submitted and reiterates, "All forms of relevant credible evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). However, in this case, as in all visa petition 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; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof.

Battery or Extreme Cruelty

In the November 9, 2009 self-affidavit he submitted at the time he filed the petition, the petitioner stated that L-A- lost interest in their sexual relations; threatened his immigration status; that she was controlling and tried to socially isolate him; and that her lack of social skills embarrassed him in front of his friends. He stated that L-A- lost her temper over "petty matters" and that she criticized his food, his religion, the way he dressed, his friends, and his sexual performance. The petitioner also stated that L-A- unexpectedly followed him on two occasions and frequently called him at work to check on his whereabouts and that she threatened him when she was intoxicated..

The petitioner also submitted an evaluation from [REDACTED] a [REDACTED] who interviewed the petitioner [REDACTED] description of the alleged abuse largely mirrored that of the petitioner's [REDACTED] self-affidavit. Although the petitioner offered few details regarding specific incidents of abuse in his [REDACTED] self-affidavit, [REDACTED] stated that he described L-A-'s controlling behavior "in painful and humiliating detail." She did not, however, discuss those details. [REDACTED] also stated that the petitioner suffers "from a mixed severely depressed and anxious reaction" to the alleged abuse perpetrated by L-A-.

In his [REDACTED] self-affidavit submitted in response to the director's request for additional evidence the petitioner repeated his earlier assertions and added that L-A- spread "false and slanderous reports" among his friends which jeopardized his position in the community; controlled

him; argued with him for hours at a time and would not allow him to sleep until he agreed that she had been right; treated him like a slave; and, on one occasion, bit his genitalia. Although the director had requested details regarding specific incidents of abuse, the petitioner stated that "there were numerous other noteworthy incidents too numerous to be documented."

The petitioner's testimonial evidence and that of his affiants fails to establish that he was subjected to battery or extreme cruelty perpetrated by L-A- during their marriage. First, as discussed by the director, the testimony of record consists primarily of generalized assertions of abuse lacking in detailed, probative information. Furthermore, of the record contains documentary evidence that conflicts with the petitioner's testimony. For example, the record contains copies of several canceled checks written by the petitioner, which undermines his claim to have been controlled financially. Although the petitioner also stated that L-A- monitored his communication, isolated him socially, and controlled him "virtually completely," the record also indicates that the petitioner has made multiple trips to Pakistan, which undermines his claim to have been controlled. These inconsistencies undermine the probative value of the petitioner's testimony regarding the alleged abuse.

Nor do the affidavits from the petitioner's friends provide the requisite detail. For example, although [REDACTED] each stated that L-A- first hit the petitioner with a broom and then attempted to stab him with a knife [REDACTED] his genitals in [REDACTED] scratched his face in [REDACTED] and locked him in their house; they did not fully describe any of those incidents in probative detail. Nor did they describe the other alleged incidents of abuse in probative detail. For example, [REDACTED] stated that L-A- extorted money from the petitioner "by using various cunning methods," but did not describe any of those methods. He also stated that L-A- used highly offensive language and dirty epithets toward the petitioner, but did not elaborate. Nor did he provide sufficient detail regarding an incident during which L-A- allegedly pushed the petitioner out of a chair. In similar fashion, although [REDACTED] stated that he personally witnessed L-A- throwing "household objects" at the petitioner, he did state what she threw at him. [REDACTED] stated that L-A- pushed, kicked, and threw dishes, but did not elaborate.

The director placed the petitioner on notice via his [REDACTED] decision denying the petition that the testimonial evidence was insufficiently vague and lacking in probative detail. However, despite such notice the petitioner opted not to provide additional detail on motion or on appeal. Instead, he made a lengthy argument regarding the evidentiary standard contained at section 204(a)(1)(J) of the Act which, as discussed earlier, he conflated with his burden of proof. The requirement that USCIS consider credible evidence does not require that it approve cases in which such evidence is submitted; again, the mere submission of credible evidence will not necessarily satisfy a petitioner's burden of proof. The petitioner's claims of physical abuse lack the probative detail necessary to demonstrate that such threats constituted battery, and his claims of control, name-calling, and threats to his immigration status lack the probative detail necessary to demonstrate that such threats constituted psychological abuse or were part of an overall pattern of violence or coercive control. The remaining behaviors alleged by the petitioner, such as lack of sexual interest, are not comparable to the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty.

The relevant evidence fails to demonstrate that L-A-subjected the petitioner to battery or extreme cruelty during their marriage as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has failed to establish that L-A- subjected him to battery or extreme cruelty during their marriage as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this 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.

ORDER: The appeal is dismissed.